



# **Public** Knowledge

**Testimony of  
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**Before the  
United States House of Representatives  
Committee on the Judiciary**

**Subcommittee on  
Antitrust, Commercial, and Administrative Law**

**Hearing on:  
Online Platforms and Market Power, Part 1: The Free and Diverse Press**

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<sup>1</sup> I want to thank Charlotte Slaiman, Competition Policy Counsel, and Sanjay Jolly, Legal Advocacy Intern, for their support in preparing this statement.

Given the important role large digital platforms play in virtually every aspect of our economy and democracy, we welcome the House Judiciary Committee's decision to launch an investigation into competition in digital platforms. As a few companies have grown to increasingly dominate key elements of the digital marketplace, this investigation is very timely and necessary.

Just as this committee and the Energy & Commerce Committee engaged in economic marketplace analysis through extensive hearings and legislative deliberations in the 1980s and 90s, seeking to understand potential market disruptions in the telecommunications and media industries, it is now appropriate to do the same in the digital marketplace. We hope the Committee will focus on information gathering to determine the ways in which the market is not performing optimally and identify what legal changes are necessary. We believe that strong antitrust enforcement and updated understanding of market dynamics can address many competitive shortcomings. However antitrust alone cannot maximize competition and sustain the democracy to which we aspire. Congress must do more to address these challenges.

Communications platforms have played a critical role in the dissemination of news and information and the practice of democracy in our society for almost two hundred years. Whether it was the telegraph, radio, telephone, television, cable, broadband or the internet, these distribution systems have influenced the way journalism is amplified throughout our society to extend the power of news and print media with each technological advancement. Each of these communications platforms also embodied economic and technological attributes that made robust market competition across platforms difficult, if not impossible, without policy intervention. Whether it was spectrum limitations, monopoly franchising arrangements, or network economics, we have constantly struggled to bring maximum market competition and diversity of ownership and viewpoints to bear in the dissemination of news and information in our society. Today is no exception.

Critical analytical journalism, a pillar of the democratic process, should benefit from a mass communications distribution platform to reach the broadest public. But as with past platforms, the internet distribution system needs public policy oversight to prevent monopolistic players from limiting robust, diverse, and thought-provoking journalism from reaching the public.

The harsh realities of the journalism marketplace coincide with the growing importance of digital platforms as an essential tool for news and information dissemination. More and more consumers get their newspaper and media news information online, relying upon platforms like Google, Apple, and Facebook to deliver the

content they desire. As we consider policy interventions necessary to overcome the digital market's natural inability to generate enough revenue to support the highest quality journalism, it is important to consider whether the major digital platforms should play a more meaningful role to help overcome these problems.

### **The Crucially Important News Industry Faces Economic Challenges Today**

A thriving news industry benefits our democracy immensely. News that is independent, follows the ethics of journalistic integrity, and that is focused at the state and local level, provides an important check on the power that large institutions--corporations and the government--have over the people. The news helps us hold these institutions to account, and make sure we are making informed choices at the ballot box and with our purchase decisions.

Local news is particularly important and faces more difficult challenges. In the last decade, several hundred newspapers have shut down, merged or cut back from daily to weekly publication. Most of the approximately 8,000 local newspapers that survive are small dailies and weeklies with a circulation of less than 15,000. Many are the primary, if not sole, source of local news. Since 2004, more than a third of the country's newspapers have changed ownership; some sold two or more times. Faced with steep declines in revenue, many long-time owners have declared bankruptcy. At the end of 2004, the three largest companies owned 487 newspapers with a combined circulation of 9.8 million. In 2016, the three largest companies own about 900 papers that have a combined circulation of 12.7 million. In contrast to 20th century media companies that would "buy and hold" newspapers for many years, today's investment groups actively manage the newspapers they own, keeping a short-term focus on the bottom line. Because the media barons acquire newspapers primarily—or solely—as an investment, often as a relatively modest part of a diverse portfolio of non-media assets, they do not pay close attention to the quality of journalism produced by their newspapers.<sup>2</sup> As the realities of the digital marketplace started taking hold, profit-maximizing newspapers and media felt increasing pressure between preserving quality and making money, often choosing consolidation to the detriment of diverse ownership to preserve their embedded business structure. The result is lower quality news.

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<sup>2</sup> Abernathy, P.M. (2016). The Rise of the New Media Baron and the Emerging Threat of News Deserts. Center for Innovation and Sustainability in Local Media, University of North Carolina at Chapel Hill. Available at [http://newspaperownership.com/wp-content/uploads/2016/09/07.UNC\\_RiseOfNewMediaBaron\\_SinglePage\\_01Sep2016-REDUCED.pdf](http://newspaperownership.com/wp-content/uploads/2016/09/07.UNC_RiseOfNewMediaBaron_SinglePage_01Sep2016-REDUCED.pdf)

Today, the economics just don't work for most newspapers. As readers transitioned to consuming news online, several important changes occurred in the industry. Classified ads, historically a major source of revenue for newspapers, have largely been replaced by online products like Craigslist, AutoTrader, and Zip Recruiter. More accurate data identifying what sources of information people actually spend most time on, now possible in the digital realm, has had the dual effects of decreasing the value of ads, and highlighting which types of news achieve the best "bang for the buck" in terms of obtaining many readers for a low investment. Unfortunately, it's not the type of high-quality journalism we'd like to imagine people seek out from newspapers. Print ad revenue has declined as data demonstrated to advertisers that they were not placing their ad money where consumers were spending the most time.<sup>3</sup>

### **Misinformation**

As we consider the plight of journalism and the news industry in today's digital marketplace, one fact must not be forgotten. The historically powerful television media and the most prominent print journalism entities contribute some of the most powerful sources of news and information on the internet. Whether it is Fox News, NBC, the New York Times or the Wall Street Journal, these established media "brands" have a supersized and amplified role in today's internet driven information marketplace as redistributed content. In other words, traditional media, and its most powerful players, are integrally connected to the most powerful ways that the internet informs and influences consumers in the digital marketplace.

As Harvard Law Professor and news industry researcher Yochai Benkler points out in his book *Network Propaganda*, we cannot understand the power of internet information distribution without also accounting for the manner in which traditional powerful media voices fuel the information that flows on the internet. In 2016, he says, "Something fundamental was happening to threaten democracy, and our collective eye fell on the novel and rapidly changing— technology. Technological processes beyond the control of any person or country—the convergence of social media, algorithmic news curation, bots, artificial intelligence, and big data analysis—were creating echo chambers that reinforced our biases." But that wasn't quite the whole story according to Benkler and his co-authors. "Facebook didn't create the asymmetric architecture of the American public sphere. Nor did the internet or the blogosphere. The asymmetry is already clear in patterns of attention to cable news networks and talk radio." Even without the choices made by digital

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<sup>3</sup> Mary Meeker, *Internet Trends 2018*, Kleiner Perkins, Slide 96, available at <https://techcrunch.com/2018/05/30/internet-trends-2018/>; compare to Meeker, *Internet Trends 2015*, Kleiner Perkins, Slide 16, available at <https://techcrunch.com/2015/05/27/the-mary-meeker-internet-trends-2015-report/>.

platforms, we see the problems of misinformation in the news media. Benkler's in depth analysis showed that, "On the left, politicians and partisans have to navigate the scrutiny and fact checking of objective media sources to reach broader audiences. On the partisan right, the gatekeepers are Fox News, talk radio, Breitbart, and the Drudge Report." Needless to say, Benkler does not consider these news outlets to be responsible curators of high quality news.

Another important source of misinformation and political radicalization has been YouTube, owned by Google's parent company, Alphabet.<sup>4</sup> YouTube's recommendation algorithm, the computer program that decides which video to recommend to users after they have watched one video, appears to have discovered that extreme content is more likely to keep users watching.<sup>5</sup> Even if you yourself don't take recommendations from the algorithm, 70% of time spent on the site is watching algorithm-suggested videos.<sup>6</sup> Just as sensational headlines helped sell more papers during the height of the original "fake news" at the turn of the last century, sensational videos increase user engagement, helping YouTube and its content creators make more money.

### **The Role of Digital Platforms**

We have witnessed the early power of the internet explode to the point where today, there is no area of human life that has not been affected by it. We now buy goods and services, do banking, pay bills, find information, and talk with multiple groups of friends and acquaintances on the web. The speed, scale, and scope of the internet, and of the technologies it has enabled, have been of unprecedented value.

In particular, digital platforms have aided citizens in their role as information producers and disseminators. While the curatorial role of traditional news outlets is incredibly valuable, it is not infallible. In 2014, Michael Brown was fatally shot by police officer Darren Wilson in Ferguson, Missouri. This tragedy, and the ensuing protests that it sparked, were initially ignored by mainstream media outlets. Regular people, "citizen journalists," took to Twitter to share what they were seeing, and eventually the mainstream news had no choice but to pay attention. Black Lives Matter activist DeRay McKesson said,

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<sup>4</sup> Kevin Roose, "The Making of a YouTube Radical", New York Times, June 8, 2019. Available at <https://www.nytimes.com/interactive/2019/06/08/technology/youtube-radical.html>.

<sup>5</sup> Just last week, YouTube announced that it is planning to change some of its content moderation policies to try to address this problem. It remains to be seen what impact this change will have. YouTube Official Blog, "Our ongoing work to tackle hate", June 5, 2019. Available at <https://youtube.googleblog.com/2019/06/our-ongoing-work-to-tackle-hate.html>.

<sup>6</sup> Kevin Roose, "The Making of a YouTube Radical", New York Times, June 8, 2019. Available at <https://www.nytimes.com/interactive/2019/06/08/technology/youtube-radical.html>.

“In no uncertain terms, if it were not for Twitter and Instagram, the majority would have tried to convince you that we did not exist.”<sup>7</sup>

At the same time, the exploding digital marketplace has effectively wiped out the market for print classified and display advertising. Because digital advertising is much cheaper, can be more personally targeted, and fits well with today’s disaggregated news delivery, it is hard to imagine that the newspaper and news media industry could replace its lost print advertising online, even if all ad revenue flowed back to journalism. Therefore, the financing of quality news in the digital market will require new sources of revenue far beyond advertising to remain a positive force for democracy.

I have attached a report I recently co-authored that analyzed the economics of digital platforms and potential policy solutions.<sup>8</sup> The report found that digital platforms, such as Google, Amazon, Apple, and Facebook, often have strong economies of scale and economies of scope. They have low marginal costs since their products are digital rather than physical, and they benefit from increasing returns to data collection and aggregation. They often have strong network effects. This leads platform markets to be prone to tipping towards monopoly or dominance. As a result, we see significant barriers to entry into these markets by any new competitor. The winner in these settings often has a large cost advantage from its scale of operations and profit advantage from the scale of its data. An entrant cannot generally overcome these without a similar user base which is difficult to obtain quickly and cost-effectively.

Additional barriers to entry are generated by consumer behavior. Economists increasingly recognize that consumers do not always behave perfectly rationally, and sometimes it's rational not to expend the extra time to allow products to compete for your business. Crucial to the power of digital platforms, the report found that, “Consumers do not scroll down to see more search results, they agree to settings chosen by the service,

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<sup>7</sup> Jenee Desmond-Harris, “Twitter forced the world to pay attention to Ferguson. It won’t last.”, Vox.com, available at <https://www.vox.com/2015/1/14/7539649/ferguson-protests-twitter>. Also see Zeynep Tufekci, *Twitter and Tear Gas*, for an excellent and nuanced discussion of this topic.

<sup>8</sup> The University of Chicago Booth School of Business, George J. Stigler Center for the Study of the Economy and the State hosted its annual Antitrust and Competition Conference this year on the subject of digital platforms. The Market Structure and Antitrust Subcommittee Report is appended to this statement, and it is available at <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/market-structure---report-as-of-15-may-2019.pdf>. Hereinafter, the Chicago Report. Harold Feld also recently discussed these issues in his ebook “The Case for the Digital Platform Act.” See <http://www.digitalplatformact.com>

they single-home on one platform, and they generally take actions that favor the status quo and make it difficult for an entrant to attract consumers. In general, the findings from the behavioral economics literature demonstrate an under-recognized market power held by incumbent digital platforms.”<sup>9</sup> This impact can be purposefully exacerbated by platforms using the very detailed large datasets they acquire from us to identify and exploit consumers’ many behavioral shortcomings and biases in real time. “Framing, nudges, and defaults can direct a consumer to the choice that is most profitable for the platform,” often staying on the platform for as long as possible, also known as “engagement”.<sup>10</sup>

The role of data in digital sectors is critical. Personal data of all types allows for targeted advertising to consumers, a common revenue model for platforms. The report shows that the returns to more dimensions and types of data may be increasing, which again advantages incumbents. Consumer data in the United States is not regulated in any way that gives useful control or privacy to consumers; and additionally, most consumers have little idea what is being collected about them and re-sold. One way in which digital platforms often exploit their market power – and increase their profits – is by requiring consumers to agree to terms and conditions that are unclear, difficult to understand, and constantly changing, but which give the platform freedom to monetize consumers’ personal data.

New entrants are crucial to market dynamism, provide more choice, different features, and a chance of higher quality. Even just the threat of new entry spurs an incumbent to provide lower prices, higher quality and innovation, and to do so more quickly. New competition in digital platforms would also provide broader societal benefits, that we believe should lead to a market that offers a better financial situation and more opportunities for news. Persistent market power by one or a few firms leads to stagnation. It is impossible to know what innovations we are missing out on today because there has been dampened competition in this crucial portion of the digital economy for the last few years.

## **Policy Solutions**

These market realities present significant challenges for antitrust enforcement. Even if the Federal Trade Commission (FTC) and Department of Justice (DOJ) enforce the antitrust laws to the fullest, as we advocate for them to do, that may not be enough to generate competitive digital markets in a timely fashion. That’s why we think this Committee’s investigation into competition and the necessary tools to promote increased competition in digital markets is crucially important.

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<sup>9</sup> Chicago Report, 6.

<sup>10</sup> Chicago Report, 7.

Ultimately we cannot rely on antitrust alone to address the problems of platform power. We need a sector-specific regulator with expertise in how digital platforms operate and authority to affirmatively promote competition. The potential problems posed by the power of digital platforms are myriad, and impact not just the news industry, but all of digital commerce and communication. The tendency of these platforms to tip toward monopoly once a sufficient size is reached requires policy tools than can be deployed much more quickly than the antitrust investigation process tends to allow for. This means a regulator with broader authority and a speedy rulemaking process is needed for competition to thrive. I look forward to the Subcommittee's continued investigation of this broader subject.

Any solution focused on news must address the concerns of misinformation and lack of trust in the news. The new expert regulator can set up systems of content moderation for platforms to pay for various mechanisms of information reliability. This includes products like NewsGuard, which analyzes the news outlet and its news gathering processes to give a certification of compliance with journalistic ethics. It could be expanded to include direct fact-checking and information analysis of individual articles and even other internet-distributed content the public tends to rely upon as sources of information. It's important to note, that although the digital platform may, and we believe should pay for these content moderation services, it does not make sense for the platform itself to provide these services. The key is to separate these functions from the ad-driven goal of increasing engagement and compensate those who provide the public with information analytics to help separate fact from fiction.<sup>11</sup>

We believe Congress should provide new incentives for investment in high-quality local journalism.<sup>12</sup> Any method of public funding that Congress devises must focus on supporting local news outlets to provide quality local news. This is the type of news that is most needed and yet is least supported in today's market.

In addition, the digital platforms that have grown dominant through scale, scope, and control of data must not be allowed to use their market power to in any way impede

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<sup>11</sup> This concept was proposed at the same Chicago Conference by the subcommittee focused on the media. That subcommittee has published an executive summary, but their full report is still forthcoming. It will be available here when it is published: <https://research.chicagobooth.edu/stigler/events/single-events/antitrust-competition-conference>. We also believe their other proposals are worthy of discussion and may indicate a path forward.

<sup>12</sup> The media subcommittee, after extensive research, identified public funding for news as its top priority.



fair market pricing for valuable journalistic products. Even when fully complying with the antitrust laws, it also makes sense to require dominant digital platforms to contribute to sustain the positive benefits to our democracy that flow from the dissemination of quality news and information on their platforms.

We do not believe this problem will be solved by allowing more consolidation of power, whether among platforms or media. And we believe exceptions to the antitrust laws should be a tool of last resort, if they are ever used.<sup>13</sup> Enabling excess market power to challenge the existing dominant platforms does nothing to address the long term need to develop market forces that promote strong local journalism, and does nothing to reduce any undue market power that may have made current market conditions worse.

## **Conclusion**

Congress must address the market externalities and any unfair practices that are undermining opportunities to invest in and make money through sound journalism. We are firmly committed to working with Congress and law enforcement agencies to modernize our laws and update enforcement practices to achieve this important goal. We urge the Committee to use this investigation process to evaluate where markets are not performing properly and what policy tools are best suited to addressing these harms. A thorough investigation of the digital marketplace should inform policy proposals both for antitrust and other pro-competition tools that can most effectively open markets to expanded competition while simultaneously preventing abusive practices by dominant firms. We urge the Committee to methodically probe market problems and determine the most effective policy tools necessary to address them.

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<sup>13</sup> Newspapers and others have alternative ways to band together with the blessings of antitrust enforcers, which prevent industry collusion.  
<https://www.justice.gov/sites/default/files/atr/legacy/2010/04/01/257318.pdf>