

April 16, 2024

The Hon. Rob Bonta
Attorney General, State of California
Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

Re: Request to Investigate Legal Implications of Google’s Decision To Block News In California

Dear Attorney General Bonta:

On behalf of the News/Media Alliance’s¹ and California News Publisher Association’s² member news providers, we respectfully request that your office investigate the competition and antitrust implications of Google’s unprecedented decision to block or impede Californian’s access to our members’ news websites through its search product. Google announced its restriction on news accessible to Californians in a blogpost on Friday, April 12th. The move appears to be either coercive or retaliatory, driven by Google’s opposition to a pending legislative measure in Sacramento. In pertinent part, Google announced that:

[W]e are beginning a short-term test for a small percentage of California users. The testing process involves removing links to California news websites ... to measure the impact of the legislation on our product experience.³

After Google’s announcement, California Senate President pro Tempore Mike McGuire correctly observed in a statement:

This is a dangerous threat by Google that not only sets a terrible precedent here in America, but puts public safety at risk for Californians who depend upon the news to keep us informed of life threatening emergencies and local public safety incidents.⁴

Importantly, Google released no further details on how many Californians will be affected, how

¹ The News/Media Alliance is a nonprofit organization headquartered in the Washington, D.C. area that has existed for more than a century. Our members represent over 2,200 diverse publishers in the United States—from the largest groups and international outlets to hyperlocal sources, from digital-only and digital-first to print. Our members are trusted and respected providers of quality journalism throughout the nation.
<https://www.newsmediaalliance.org/about-us/>

² California News Publishers Association is a nonprofit trade association founded in 1888 that represents the daily, weekly, monthly, and campus newspapers of California. We have over 800 members.
<https://cnpa.com/directories/cnpa-member-directories>

³ <https://blog.google/products/news/california-journalism-preservation-act-puts-news-ecosystem-at-risk/>

⁴ <https://www.sfchronicle.com/politics/article/google-restricts-california-news-19399804.php>

the Californians who will be denied news access were chosen, what publications will be affected, how long the compelled news blackouts will persist, or whether access will be blocked entirely or just to content Google particularly disfavors. Because of these unknowns, there are many ways Google's unilateral decision to turn off access to news websites for Californians could violate California laws.

Unruh Act

Google determining which Californians will be denied access to news through its search product means it will be differentiating between Californians to the disadvantage of some. This implicates the Unruh Civil Rights Act. Civil Code section 51(b) of that Act provides:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Similarly, California has a wide variety of ethnic media. Google's secret criteria for blocking news searches may unlawfully discriminate against ethnic publishers and their readers.

We respectfully request that you investigate Google's secret criteria for determining which Californians have access to possibly life-preserving news to ensure its criteria does not in whole or in part, discriminate based on "sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status".

False Advertising or Misrepresentation.

Google makes the following statement about how its products deliver information to users:

The search results that appear from Google's indices are indexed by Google's automated machinery and computers, and Google cannot and does not screen the sites before including them in the indices from which such automated search results are gathered.⁵

Google's Friday announcement directly contradicts this representation, possibly violating Business & Professions Code section 17500. We respectfully request that you investigate this foundational contradiction between how Google represents its search function works and its announcement that it apparently will, in fact, "screen [news] sites before including them in the indices" that some Californians will see.

⁵ <https://policies.google.com/terms/archive/20020906?hl=en>

Violation of the California Consumer Privacy Act of 2018

Google’s identification and selection of “a small percentage of California users” to deny them news they are searching for raises questions about whether Google is complying with this Act. Civil Code Section 1798.100(a)(1) requires that Google “shall, at or before the point of collection, inform consumers of . . . the purposes for which the categories of personal information are collected or used [.]”

Because Google may be using the “personal information” of Californians to deny them access to news content they are searching for, this statute could require Google to notify affected Californians of this use of their personal information. Notably, “personal information” is broadly defined in the Act. It includes “information that . . . relates to, [or] is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.” (Civ. Code section 1798.104(v)). More specifically, “personal information includes” many categories of information that could be among those used by Google to deny some Californians access to news such as:

- “[U]nique personal identifier, online identifier, Internet Protocol address, email address, account name, social security number, driver’s license number, passport number, or other similar identifiers.”⁶
- “Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer’s interaction with an internet website application, or advertisement.”⁷
- “Inferences drawn from any of the information identified in this subdivision to create a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.”⁸

We respectfully request that you investigate whether, in denying certain Californians news access through its product, Google is using personally identifiable information and, if so, whether Google’s conduct violates the Act.

Business Torts

Interference with Contractual Relations

California recognizes a cause of action when a third party intentionally interferes with the contractual relationship between two businesses.⁹ News website publishers likely have agreements with advertisers regarding who is able to view their websites that will be affected by Google’s decision to block users’ access to those websites. Moreover, Google has offered no assurance that it won’t block the access of subscribers to news websites who have paid to access the site.

⁶ Civ. Code section 1798.104(v)(A).

⁷ Civ. Code section 1798.104(v)(F).

⁸ Civ. Code section 1798.104(v)(K).

⁹ <https://www.justia.com/trials-litigation/docs/caci/2200/2201/>

Interference with Prospective Economic Advantage

California also recognizes a cause of action when a third party intentionally interferes with a business’s potential economic opportunities, such as prospective customers or business partners.¹⁰ News publishers may be unable to sell subscriptions or advertising at the same rates if users’ access to news websites will be suddenly blocked or impeded.

We respectfully request you investigate whether Google’s actions give rise to these causes of action and, therefore, violate Business & Professions Code section 17200, *et seq.*

Public Nuisance

A public nuisance is an unreasonable interference with a right common to the general public and behavior that unreasonably interferes with the health, safety, peace, comfort, or convenience of the general community. Restatement (Second) of Torts section 821B (1979). *See also*, California Civil Code section 3480: “A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” Internet-based platforms such as Meta are currently being sued in courts in this state by agencies on public nuisance theories.

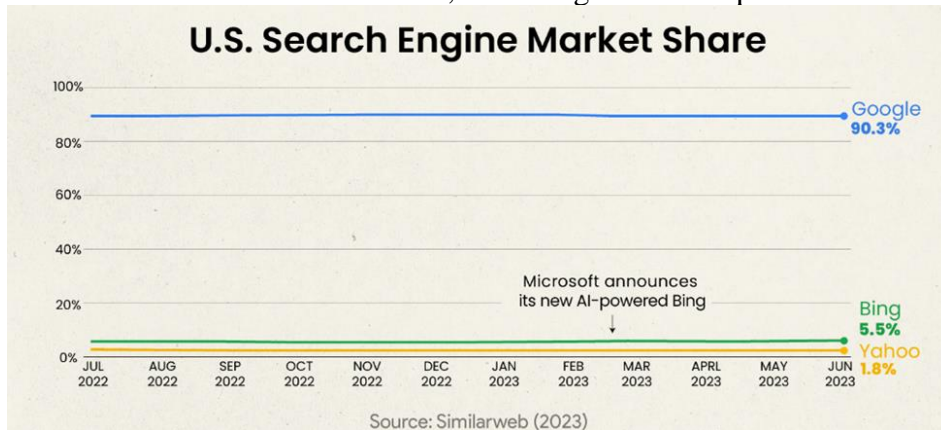
As foreshadowed by the California Senate President pro Tempore’s statement, Google may have “put[] public safety at risk for Californians who depend upon the news to keep us informed of life threatening emergencies and local public safety incidents.”

We respectfully request you investigate whether Google’s actions may have caused or may cause a public nuisance.

Section 2 of the Sherman Antitrust Act

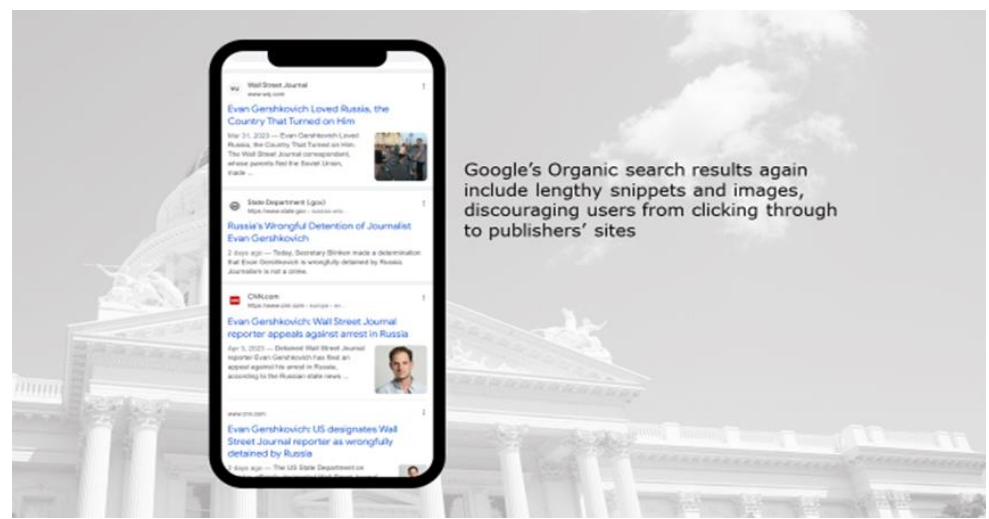
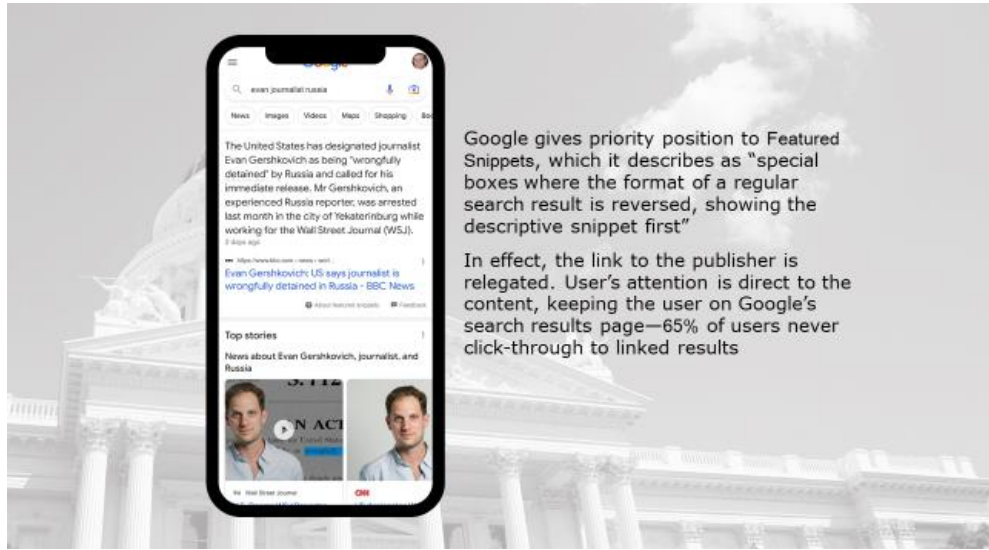
Anticompetitive exclusionary conduct by a single corporation like Google with substantial market power is generally prohibited by Section 2 of the Sherman Act, 15 U.S.C. section 2.

First, to say that Google has substantial market power in internet search is an understatement. It has more than a 90% market share, according to some experts:



¹⁰ <https://www.justia.com/trials-litigation/docs/caci/2200/2202/>

Second, Google itself is a competitor to the news publishers whose customers are being blocked from finding them through Google. This is because Google, in responding to a search for news, will, without permission or compensation, lift snippets of text from news websites and place it on its search results page. This permits Google to profitably display its ads to a user looking for news, in direct competition to and at the literal expense of the news websites that actually paid for the reporting whose ads are not seen. Some experts project that 65% of the time, those who search for news on Google never actually click through to the news website that depends on its ads being seen to pay for the news being reported.¹¹



Indeed, Google is now going even further. Through its Search Generative Experience (“SGE”) feature, Google has introduced AI-generated news content to its search results pages. This news content is built upon and competes with third-party news publishers’ content that Google has in its

¹¹ Troy Masters, *The California Journalism Preservation Act is Our Best Bet to Protect Journalism*, SACRAMENTO BEE (June 29, 2023), <https://www.sacbee.com/opinion/article275859591.html>.

search index. It is not clear from Google’s announcement whether it will also cease publishing AI-generated content on its search results pages in California. If it does not, then Google will be cutting off traffic to its news publisher rivals while promoting its own competing substitute content.

Thus, Google – a company with over 90% of the search market that is also providing news – has announced it will impede the ability of competing news publishers to reach California news consumers. This would be anticompetitive, exclusionary conduct that may be unlawful under Section 2 of the Sherman Act and we respectfully request that you investigate immediately.

Unfair Competition

California’s Unfair Competition Law (UCL), Business and Professions Code section 17200-17210) broadly prohibits any unlawful, unfair, or fraudulent business practice. A claim under the “unlawful” prong of Section 17200 can be based on any federal or state law violation, including the laws described above.¹² Moreover, a practice is prohibited as “unfair” or “deceptive” even if not “unlawful” and vice versa.¹³ “An unfair business practice occurs when the practice ‘offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.’”

Google’s demonstration of its market dominance over search by unilaterally impeding some Californians news access that could be critical for their businesses, their homes, their personal safety and the safety of their children, and that is foundational to local democracy and the Rule of Law, may fall squarely under the definition of “unfair” above and could be unlawful.

Conclusion

History too often repeats itself. At the turn of the 19th Century, and until California’s Republican Progressives were victorious in 1911 in electing Hiram Johnson Governor, and enacting the initiative, the recall, the referendum, and the franchise for women, the single corporation of the Southern Pacific Railroad dominated California’s economy. In 1872, for example, it threatened to build its railway lines outside the City of Los Angeles unless the City paid it then-enormous sum of \$600,000. The City paid. It realistically had no choice not to.

Perhaps not since that period has a single company so brazenly sought to impose its will on this State, or any state, and its residents. California’s history is steeped in resistance to exactly such single company dominance. Californians also have a compelling interest in freely accessing digital news. For the foregoing reasons, we respectfully request that you investigate whether Google is violating the laws listed above in blocking or impeding Californian’s ability to find news that they rely upon for their business, their prosperity, their pleasure, their democracy and, sometimes, their lives.

¹² *State Farm Fire Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1103.

¹³ *Id.* at 1104.

Thank you, in advance, for your consideration of our request, and we remain,

Very truly yours,



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California News Publishers Association



Danielle Coffey
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News/Media Alliance