

These are a very interested but severely disabled citizen's response to Richard S. Whitt Esq comments by the Washington Telecom and Media Counsel for Google Inc. Google Inc now faces Curtis J Neeley Jr in a District Court case and is ignoring two docketed Supreme Court cases wherein the Federal Communications commission is a VERY interested party and is notified and named as a defendant in both.

## **Introduction**

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

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

On the advertising side, Google's AdSense platform helps publishers generate revenue from their content by providing relevant advertising and improving the connection between advertisers and consumers. In 2009 alone, Google shared more than \$5 billion in revenue with AdSense partners. In addition, many major media companies, including online newspapers, use Google's DoubleClick platforms to manage, and maximize the value of, their most valuable online advertising inventory – the display ads they sell directly – to ensure that the right ad is placed in front of the right consumer at the right time. Google has invested significantly in these products, launching the new DoubleClick Ad Exchange and the upgraded DoubleClick for Publishers platform in the past 12 months. Google's AdSense for Domains platform helps Google Inc sell advertisement on domains cybersquatted by Google Inc like <Gougul.com>, <profit.com> and <fed-ex.com>. There are millions of domains registered for every few used for bona-fide commerce. Does the FCC also plan to continue to allow Google Inc to sell advertising to <Priceline.com> while licensing several cybersquatters of <Priceline.com> and in fact therefore cybersquatting their own advertiser in violation of US Title 15 § 1125(d).

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

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

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

## **Google Business Problems Require Google Business Solutions Rather than Regulations**

The Discussion Draft contains several potential policy proposals designed to maximize the accessibility of government information and Google supports many of them. The recommendations on Copy-right, hot news, and antitrust, however, put forward by certain members of the news industry, will not solve the problems the news industry faces, but will stifle the very innovation that provides hope for its future. The news industry is not familiar with Google Inc “Copy-right” alternatives created in NY in a class action with the Author’s Guild but our views on the specific proposals are set forth in subsequent sections.

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

Newspapers have had periodic business model challenges since long before Google Inc: Circulation by U.S. household has been on decline since the early twentieth century; the number of newspapers distributed peaked between 1890 and 1920. Indeed, the debates over newspapers and competition, while less good-natured in tone, easily fit within Yankees catcher Yogi Berra’s famous malapropism, “It’s like déjà vu all over again.” Google Inc should herein use another baseball themed phrase from “Field of Dreams” - - “If you build it, they will come.”

In 1922 at the onset of the great Newspaper-Radio War, newspapers about radio used the same arguments and the same rhetoric currently being used to describe the Internet. In 1957, newspaper editors – foreshadowing the rhetoric used by some against the Internet called television reporters parasites and observed that they should handle their own news instead of cashing in on our brains and experience. Famed *New York Times* reporter James Reston complained that the press conference is an instrument vital to democratic processes and is being overwhelmed by paraphernalia.

After print journalists lost their war against radio and then television journalists in the Eisenhower era, newspaper quickly ceased to exist. Each communications innovation has caused a repetition of the discussion that’s taking place today over the future of journalism and the Internet but using other apparatus. The Internet, rather than being the cause of journalism’s downfall, provides a unique opportunity for news organizations to renew and reinvigorate journalism.

Maximizing the Google Inc monetization of online traffic will require innovation and experimentation in how news is most profitably delivered online, and how advertising can best do this. Google is working with various publishers in Court to make this transition, including developing new and improved monetization methods and a copy-right alternative, and believes that the news industry will emerge from the transition better equipped to serve Google Inc – and thus to flourish – in the online world. The ultimate solutions that will result in a new online equilibrium for the news industry cannot, however, be mandated by changes in the regulatory framework or a change to the Copy-right laws. Google Inc is doing that already in New York in a class action. The solutions, instead, must be driven by the industry itself, working with technology providers like Google Inc and experimenting with its customers to develop new and innovative ways of delivering the news online.

### **Google Inc Reaching Broader Audiences through Search and Other Services**

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

The goal of Google News has always been to offer users the ability to access varied perspectives on a story in order to help them better understand current events and click on a advertisement to generate revenue. To that end, Google indexes more than 50,000 sources in dozens of languages from around the world. The big news events of the day are identified and ranked by computer algorithms that reflect the publishing activity – the collective news judgment – of news organizations. Then individual articles are automatically selected and ranked based on factors such as freshness, location, relevance, and diversity of their content, without regard to political viewpoint or ideology – simply profit potential. Google News shows only a headline and sometimes a snippet – just enough for someone to decide if they're interested in reading the story. Clicking on the link takes them directly to the publisher's website and generates revenue for Google Inc. They do so at a rate of about one billion times a month from Google News alone. Google Inc News has no reporters on staff and no journalists on staff but reads the entire Internet and profits from the work of others.

Google believes that by helping users more efficiently find different points of view they can better inform themselves as citizens while clicking advertisement purchased by professional journalists. Quality content harvesting is complementary to Google's search services – if there is better content on the Web, people are likely to do more searches, which will be good for Google's business. Users' willingness to continue using Google to conduct Web searches is entirely dependent on Google's ability to harvest and display useful search results. It is, therefore, in Google's interest to help content owners create and find better ways to monetize content while using their professional journalists to provide Google Inc free snippets that Google Inc can use completely in common law fair use exceptions to US Title 17.

The key to this **parasitic** relationship between Google's services and online content providers is Google Search. Search is all that Google does. Consistent with this, Google News is a product that makes it easier for consumers to search for journalistic content and to connect with the websites that have the news that most interests them. High quality websites with professional journalist and professional designers are more likely to pay Google Inc more so their News Content ranks higher in searches. With Google News, users use Google Inc to scour the Web for up-to-date news stories. Moreover, Google News is not designed to encourage users to only use the Google News website; rather, it is designed to help users chose the News advertisers of articles they want to read and to sell News producers advertisement "clicks" as quickly as possible to the publisher's site to do so.

Unfortunately, the Discussion Draft recognizes that search engines are cannibalizing newspaper advertising revenue rather than serving as an important connection to potential consumers. In fact, search engines do not derive a significant amount of revenue from news content. Many search engines generate revenue from displaying simple text ads near organic search results; advertisers bid for that placement and pay only if someone clicks on the ad, making it a highly targeted, relevant, and measurable form of advertising. But the real money in search engine advertising is in highly commercial queries for goods and services in such areas as shopping, health, and travel. (For example, Google generates only a tiny fraction of its search revenue from queries that we categorize as News & Current events; while searches for terms like Canon Powershot digital camera are very attractive to advertisers, news-related queries often trigger few or no ads at all.) Avg. CPC on September 12, 2010 was \$0.55 - \$1.19 with an estimated Clicks/day of 126 – 159 "clicks with an average cost estimate of \$87.00 - \$150.00 This was given a daily prepaid budget of \$150. Based on max CostPerClick of \$50.00 and budget: \$500.00/day the Avg. CostPerClick changes to \$0.63 - \$1.23 with an estimated Clicks per day of 405 – 507 with a cost per day estimate of \$320.09 - \$500.00 on September 12, 2010. Curtis Neeley reminds us of humorous malapropism of "If you build a budget, Google Inc will spend it." There is no guarantee that it will not be an ad displayed on a domain cybersquatted by AdSense for Domains but if you build a budget, Google Inc will spend it.

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

Traditionally, the advertising revenue from these special sections has been used to cross-subsidize the core news production; in other words, the automotive and real estate sections pay for the Baghdad bureau. Nowadays, Internet users go directly to websites like Edmunds, Orbitz, Epicurious, and Amazon to look for products and services in specialized areas. Advertisers follow those eyeballs, which makes the traditional cross-subsidization model that newspapers have used far more difficult if not impossible. That cross-subsidization was possible only because the print format allowed newspapers to capture their audiences and keep them. The ability to cross-subsidize from print to internet does not work in the best interests of Google Inc and FTC seems to consider creating a way for requiring Google Inc to pay for even the snippets that they harvest and display using fair-use exceptions to US Title 17 found now in §§ 107, 108, 110, 111, 119.

## **Design Innovations to Attract and Retain Google Inc Audiences**

John Temple, former editor, president, and publisher of the Rocky Mountain News, described in his blog post about the lessons he had learned from his newspaper's demise on February 27, 2009. As the paper's online service was not viewed by management as providing consumer value in its own right, but rather solely as a way to support the print edition. This mistake proved to be fatal: Being a great newspaper isn't enough in the Internet era. You have to know what business you're in. We thought we were in the newspaper business. Working on the Web, you need to think of now and forever. At a newspaper, people largely think about tomorrow. Thinking about tomorrow isn't enough anymore. Consumers today want services when, where and how they want them, and they want to be able to participate in and not just receive news.

## **Copy-right or copy-WRONG?**

What if an artist only sang one song that was popular and consumers wanted to hear only it and not the other 13 "lame" songs on the album? The possibility once existed to purchase just that one song only if the Copy-right owner also sold it as a single.

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

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

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

Google Inc runs advertisements on harvested fair-use snippets. BLOGs, and social networks can direct traffic to publishers' sites, but once readers land on a site, it is the publisher who bears the responsibility of keeping them on the site and generating revenue. **Statutory monetization of fair use snippets is the only real answer for the future journalism.** This is not in Google Inc best interests as should be obvious.

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

In this regard, an important factor for online news providers to consider in today's digital age is the fundamental design and presentation of their content. For example, the simple and effective navigational elements that the Web offers can provide publishers with ways to keep readers engaged on their sites for longer periods of time. When a reader finishes an article online, rather than flipping the page to see what is next, the reader needs information about where she might go next to find another story of interest. Here, the online publication should help provide the consumer with readily identifiable options: Click on a related article or advertisement? Post a comment? Read earlier stories on this topic? Much like Amazon.com suggests related products and Google Inc YouTube makes it easy to play another video, publications can provide obvious and engaging next steps for users.

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

### **Advertising and Other Revenue Streams**

This is revenue that has been lost due to a change in the classified advertising business, a change that reflects, moreover, more and more vigorous competition. Indeed, the loss of classified advertising to Craigslist, eBay and other online advertisers has nothing to do with copying or free-riding, and everything to do with the emergence of a new, more effective and more efficient product into the marketplace. The FTC would ordinarily regard such a situation as a cause for celebration – consumers are getting a better product at a lower price – not an opportunity to slow down or realign profit acquisition in relation to content creation through regulation.

In the case of advertising revenues the challenge for Google Inc once was to provide an online advertising space of sufficient value to the advertiser that the advertiser is willing to pay for a finger twitch known as a click. One of the largest flaws of the proposals outlined in the FTC Discussion Draft is their failure to take this basic economic facts as they exist now greatly favoring Google Inc profiteering, while tax exempt, by selling advertisement to content using only the fair-use snippets harvested as content. Any long-term improvement in news companies' fortunes is likely to come from increased regulation content index licensing to search engines instead of the current free fair use snippet harvesting for content and subscription revenues that can only be increased by new and effective content licensing models *for search engines harvesting content and readers* as modernization of the unconstitutional and unfair seventeenth century US Title 17.

The large profit margins newspapers enjoyed in the past were built on an artificial scarcity: Limited choice for advertisers as well as readers. With the Internet, that scarcity has been taken away and replaced by a segmented monopolization of abundance. No policy proposal will be able to restore newspaper revenues to what they were before the emergence of online news besides wholesale revision of the fair-use exceptions in US Title 17. It is not a question of analog dollars versus digital dimes, but rather a realistic assessment of how to make money in a world of abundant competitors and consumer choice and how best to monetize snippet or "fair use exceptions into profitable licensure to offset the decades of free content harvested and sold by Google Inc and other massively profitable tax exempt business models.

In addition to abundance, the Internet facilitates the delivery of effective advertising and the exact measurement of advertising effectiveness. An online advertiser can measure the effectiveness of advertising closely and target ads very precisely down to the cost per click. With contextual advertising, for example, Google serves relevant advertisements on its publisher partners' websites that are tailored to the particular page or article that the user is viewing. The advertisers can get detailed information about how effective a particular ad is – including how often the ad was clicked (or otherwise engaged with by JavaScript compliant browsers) and whether, once clicked, the consumer actually made a purchase on the advertiser's website. With interest-based advertising, advertising effectiveness and precision is even more pronounced. Interest-based ads are served based upon the browsing history of a user (with the user's consent and control or failure to realize it even occurs) and the advertiser or advertising agency can obtain aggregated data on the effectiveness of any given ad as done now in Google Inc AdWords.. In short, the Internet makes it possible for advertisers to deliver relevant advertising to consumers and to measure the effectiveness of that advertising, so that consumers continue to hear about the products and services in which they are most interested. Now is a good time to remind the reader again of a "Field of Dreams" baseball malapropism "If you build it, they will come". Google Inc already built it and they came trillions of times. If a News provider creates a good enough snippet and pays enough for the relevant keyword, the viewer will come. The snippets being used to generate search engine traffic must be licensed due to a revision of fair-use by statutes or there will eventually be no journalist working to collect the news to create a snippet for Google Inc to harvest and display or sell clicks on.

## **Content Producers Must be Required to Control the Terms of Access**

An open Internet where all content is findable free of charge due to severely antiquated and unconstitutional copy-right law from the seventeenth century is critical to the surplus-enhancing aspects of the Internet. It is what makes it possible to deliver the best matches of consumers to the information that is relevant and useful to them. As the newspaper industry manages the transition into the digital world, however, Google realizes that publishers will have the ability to control whether their sites are indexed at all and what parts of their sites are indexed if they choose to allow free indexing. Content providers decide and on what terms a consumer is permitted to access their sites (e.g., whether the content sits behind a pay wall of some sort or, at the other end of the spectrum, is freely available). Indexing a news site should require paying a license fee even for headlines or snippets after US Title 17 is updated from the current Seventeenth Century excuse for unfairness.

Publishers have simple tools at their disposal to communicate instructions about whether they want search engines to index their sites, and Google's current policy is to respect those instructions. It should be made a statutory requirement. For example, using what is called the Robots Exclusion Protocol (REP) (which is the *de facto* industry standard used throughout the Web for over 15 years that should now be mandated for all sites to establish the fee charged for indexing or the amount the user will pay to be indexed, a site administrator who wishes to remove websites and possible pornography from Google's index can easily do so using a robots.txt file that will prevent viewership of pornography by modern FCC compliant browsers to remove sites or prevent search engines from crawling parts of a site. A robots.txt file enables site owners to restrict access to a website by search engine robots that crawl the Web or if misapplied could result in an FCC penalty. A website owner chooses to allow pages or the entire site to Web crawlers by failing to use robots.txt files currently. If a website owner uses a robots.txt file to restrict access, Search Engines will not crawl or index the content of pages blocked by the robots.txt file. However, they may still index the website's URL, if Googlebot finds those URLs on other pages on the Web. Google will remove the website from its index if a noindex meta tag is present

When the Google crawler finds a website with a noindex meta tag on a page, Google will completely drop that page from its search results, *even if other pages link to it*. If the site is currently in Google's index, Google will remove it the next time the crawler crawls the site. The meta tag allows the website owner to control access completely, on a page-by-page basis. Since Search Engine Robots analyze the pages indexed based on human instructions, the snippets and content that is indexed should be paid for and regulated for indecency as already required by laws on the books and not enforced due to FCC nonfeasance.

Through the use of the robots.txt file and the noindex meta tag, website owners are able to prevent their sites, or specific content on their sites, from being indexed by search engines by voluntary obedience of the REP that should become statutory in the new Digital Era. In fact, website owners are even able to specifically prohibit Google et al from indexing their site while allowing other Web crawlers to do so. Thus, website owners may easily exclude indecent content from the Search Engines. Meta tags also allow a much deeper level of granularity. For example, publishers can instruct Google or other search engines to index articles but not pornographic images or to display headlines but not snippets. "If you build it, it can be regulated to be decent"

Inclusion of news content in the Google Web Search index is not conditional on inclusion in Google News. To remove content from Google News, publishers can simply fill out a contact form in Google's Help Center if made aware of the opt-out choice that is available. In addition, since December 2009, the Google News Web crawler (Googlebot- News) has extended REP controls specifically to Google News. This means that if publishers want to opt out of Google News or cease providing free content under antiquated US Title 17, they do not even have to contact Google they can put instructions just for Googlebot-News in the same robots.txt file they have today, if in fact they are aware of the industry option of REP. This change allows publishers to do more than just allow/disallow access to Google News harvesting. They are also able to apply the full range of REP directives just to Google News, such as excluding specific articles or obscene images or instructing Google to show headlines but not snippets. While this means even more control for publishers, the effect of opting-out of News is the same as it has always been: Content will not be in Google News or in the parts of Google that are powered by the News index, but will still show up as natural Web Search results as will be done statutorily by the new FCC search engine in the coming Digital Era. Removal of content from Google News does not affect how publishers' content appears in Google Web Search results or how indexed by the future United States FCC search engine.

**All news content sites need a regulatory statutory noindex protection instead of the OPTION of actually having one. Websites could then include a statutorily defined licensure for indexing in their meta tag. Google Inc and other search engines do not exist without content to search and sell links to. Read this paragraph over and over. This paragraph is underlined and highlighted in hopes an idiotic commissioner or two at the FCC actually reads. This possibility is highly unlikely.**

#### **Comments on Policy Proposals in FTC Discussion Draft**

Google appreciated the opportunity to comment on the proposed recommendations contained in the Discussion Draft. The Discussion Draft contains several potential policy proposals designed to increase the accessibility of government information. Google generally supports these proposals. However, the Discussion Draft also contains some potential policy recommendations that Google believes are bad and, if adopted into actual recommendations, would result in significant harm to Google Inc shareholder's welfare.

Google first addressed the recommendations relating to the accessibility of government data. Google Inc then continued with comments relating to the Discussion Draft's policy proposals relating to statutory limits and fair use, licensing the news, federal hot news legislation, and, finally, collaborative actions and antitrust exemptions which are unimportant to this reply by Curtis J Neeley Jr or a VERY interested party.

## **Policy Proposals Relating to Maximizing the Accessibility of Government Information**

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

Google Inc first notes that the Copy-right status of government information under Federal law is well-settled in that Section 105 of the Copy-right Act states explicitly that copy-right protection under this title is not available for any work of the United States Government. Many states and municipalities, however, have more restrictive statutes relating to the protectability of government information by Copy-right, making it possible that state or local government information could be subject to greater restrictions on availability, dissemination, and use due to statutory privacy laws. Google Inc finds the logic of the Federal government's longstanding policy in favor of the broad availability of government information compelling and easily acceptable by the public, as long as indexing of personal data was opt-in instead of opt-out. Blood types, income, ages, sexual orientation clues and other personal data should be subject to a reasonable expectation of privacy, as should all data that a reasonable person would rather maintain privately:

As a matter of principle, material produced by the Government is public property and should be freely available to the public for reproduction; the widest possible dissemination of information developed by the Government should be encouraged and dissemination might be inhibited by Copy-right. Underlying this principle is the belief that taxpayers should not be made to pay twice, first in taxes and second in procuring a copy of the work. Google Inc, therefore, encourage further study of the question of harmonization of state and federal law relating to the copy-right-ability of government information such that any inconsistencies in the availability of such information to the public would be resolved in favor of broad dissemination and continued tax-exempt profiteering by search engines like Google Inc.

Google supports the FCC's recommendation that federal, state, and local authorities be encouraged to maximize access to publicly available information online and to establish the routine release of certain types of records. Indeed, Google makes tools available on its website for public sector organizations that provide guidance to such organizations on how to make their websites accessible to search engines and thereby expand citizen access to government information and services. "If you build it, they will come."

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

Finally, even the the FTC Discussion Draft contained a proposal relating to development of a common statutory taxonomy of metadata tags for all online content.

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

Google Inc noted at the outset that the Discussion Draft begins the section on Copy-right and Fair Use with a brief summary of the current state of the law that appears designed to set the stage by providing context for the policy proposals subsequently outlined in the draft. While Google appreciates that all questions relating to the application of the US Title 17 to particular factual scenarios involving search engines and news may not yet have been answered. Google Inc does not believe that there is as much uncertainty in the state of the law as the Discussion Draft appears to suggest because Google has established a “copy-right alternative” in New York in a class action conspiracy with the Authors Guild that has not yet resolved and was opposed by the Attorney General.

Cases, for example, may always be overruled or decided differently in a different circuit or where different facts are presented. That does not make them any less the law where, as in copy-right, the antiquated United States law has developed through the common law process of Court decisions. Google Inc, therefore, strongly suggests that, notwithstanding the comments of Curtis J Neeley Jr regarding the uncertainty of the law in this area, the Commission formulate its recommendations against the backdrop of an objective analysis of the case law as it currently stands. Please. Google Inc believes Curtis J Neeley Jr will not be granted certiorari in (10-6071) or a writ of mandamus in (10-6240). Google Inc has sufficiently coached and or bribed Supreme Court Clerks to ensure Mr Neeley remains simply DENIED and ignored.

### **Proposed Recommendations Relating to Modifications of the Copy-right Act**

Google believes that the FTC’s skeptical treatment of the proposals made through the workshop relating to amendment of the Copy-right Act to limit the fair use doctrine as it applies to aggregators and search engines is wholly unwarranted. This would, in fact, eliminate Google Inc profiteering. The Federal Courts are the most appropriate venue for further exploration of the application of the fair use doctrine to aggregators and search engines and have already demonstrated the capability to mishandle these issues in *Perfect 10, Inc. v. Amazon.com, Inc.* and *Perfect 10, Inc. v. Google Inc*. There is simply no reasonable basis for the view that amending the Copy-right Act is necessary here except the fact that EVERY CIVILIZED country on Earth already recognizes the moral rights of a person to be secure in originally created art and the United States claims this is covered enough by other laws to allow signing the Berne Convention Treaty.

Google profits immensely in the incapability of the Federal court system to interpret the fair use doctrine consistently with the Copy-right Act thus far. “*Perfect 10*” is the law in the Ninth Circuit and has been cited favorably by a number of other federal District Courts and yet was mocked during the German trial that ruled thumbnails were not covered by fair use and that thumbnails are, in fact, equivalent to the full size images regardless of the server they are stored on. To the extent that proponents of an amendment to the Copy-right Act believe that *Perfect 10* was wrongly decided, Google Inc is aware of no court yet that has criticized the analysis in the three LONG years since the opinion was issued. It is, however, now before the Supreme Court and the Western District of Arkansas. US Title 17 has been unconstitutional on its face since the March 31, 1790 passage of the April Fools HOAX and three years is insignificant compared to the two hundred and twenty years that have already passed with a law introduced that was a copy of the Statute of Anne introduced by an un-elected Judge named Benjamin Huntington to ensure his friend Noel Webster could license the mass publication of early American English school texts. US Title 17 has made the United States look as backward as they looked in early Sept 2010 with a FL pastor threatening to burn the Qu’ran while search engines trafficked pornography to the entire Earth with no concern for the MORAL rights of the PORN creators to be secure in their persons. This fundamental right is recognized in scores of less morally challenged countries.

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

Google Inc professes to not be aware of:

**Curtis J Neeley Jr. MFA v NameMedia Inc et al, (5:09-cv-05151-JLH)**

Google Inc has asserted therein asserted fair use protections that will face a JURY during the 221<sup>st</sup> anniversary of the April Fools HOAX of US Title 17 and by June 2011, the Seventh Amendment Jury decision will determine the application of the fair use doctrine to Google Inc and NameMedia Inc. Changes in existing law are typically prompted by actual shortcomings in case law like these existing now or pending for denial before the **SUPREME COURT** to thereby protect PORN.

### **Proposal to License the News**

The Discussion Draft includes a section relating to a proposal made by some participants in the workshops that some sort of industry-wide licensing arrangement be adopted, perhaps with the government’s help and support? The draft also mentions the proposal of another participant that the Copy-right law be amended to levy a licensing fee on every Internet Service Provider in the amount of five to seven dollars for every account it provides. Google hopes there are sufficient reasons to reject both proposals.

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

The FTC Discussion Draft notes the levy recommendation imposes a tax on people who may never go to the sites of those receiving the money. There is, moreover, no realistic suggestion for how such staggering amounts of money – there are an estimated 260 million Internet users in North America – would be distributed fairly. Google, therefore, believes that the adoption of such a policy recommendation would be a mistake. There are much easier and more common sense approaches to taxation of the WIRE COMMUNICATIONS now called the Internet for a sematic disguise.

### **Proposed Recommendations Relating to Hot News**

The FTC Discussion Draft recounts proposals by some stakeholders to amend the Copy-right Act to grant Copy-right protection to hot news and to encourage the development of state hot news misappropriation laws. It also provides a brief summary of the pros and cons of these legislative proposals, as articulated by participants in the workshops. For the reasons set forth below, these proposals should be rejected. Would it help if Google Inc said please or donated enough money to political candidates?

Facts cannot be protected by Copy-right since there is no author of them besides the Creator. This has been the law of Copy-right since its inception, but was given Constitutional import recently in the Supreme Court's 1991 *Feist* opinion where the Court noted that the first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence. Thus, as a Constitutional matter, even a competitor remains free to use the facts contained in another's publication to aid in preparing a competing work. Central to *Feist's* holding is its rejection of the notion that the "sweat of the brow" creates intellectual property rights, and it is precisely this doctrine Google Inc hopes the theory rests on for hot news regardless of the "sweat of the brows" that were involved in acquiring or first reporting the "hot news".

Protecting hot news under misappropriation laws is not compatible with principles created in *Feist*. As *Feist* Judges explained, the Copy-right Clause leaves facts in the public domain for all to freely use, precluding any claim of a property right in those facts. The Google Inc hired lawyers hope the FCC will hold the freedom to copy facts at will is an essential component of the Promotion of the Progress of Science and Useful Arts or purported goal of the antiquated and prima facie unconstitutional US Title 17 regardless of the expense and cost of covering or typing the data that Google then copies and makes into snippets without paying for the reportage of news.

When the Congress legislates hot news protection or the Courts require it, doing so will actually run counter to the interests of many news organizations. For example, all competent reporters use search engines in their research, and indexing of articles allows stories to be found on the Web, which drives users and provides content for Google Inc. It is longstanding industry practice for news outlets to report on other outlets' breaking stories (e.g., The Associated Press reported that Elena Kagan was President Obama's Supreme Court nominee; CNN.com reported the possible presence of a bomb in Times Square. CNN new reported that a FL pastor finally decided not to burn the Noble Qu'ran). For decades, television and radio newsreaders have broadcast information obtained from newspapers without controversy while only citing the source.

Newspaper, radio, and, more recently, Internet news organizations learn and write about breaking events on television. Endorsing hot news misappropriation would not only create uncertainty in news outlets across America as to how long they must sit on important factual information, but it would also not serve the public interest by preventing citizens from receiving important, time-sensitive, factual information.

Indeed, the notion that established media outlets should have a monopoly (even for a limited period of time) on facts is idiotic. Today, breaking news is often reported first by individuals on the scene and equipped with nothing more than a cell phone and a connection to a social media site such as Twitter. For example, on January 15, 2009, when a US Airways flight went down into the Hudson River, it was a passenger on the first ferry that disseminated the first photographs and reporting of the incident. This is also true of natural disasters and ongoing events like the clashes between Iranian dissidents and the government of that country. It is simply easily possible to formulate a "hot news tort" that would encourage the important role played in news collection and dissemination by individuals. If carelessly done the tort would provide a factual monopoly for established news organizations. **A tort could easily be engineered wherein the hot news discoverer could claim rights to the profits made on the hot news by anyone for a limited period. This new tort would encourage more travelers to report news as it occurs as broadly and as accurately as possible.** Please read over the last two sentences a few times before proceeding and after finishing please come ack and read the bolded text.

Moreover, the flow of information between traditional media and individuals using social networking sites is constant and inseparable. As the same story about the US Airways incident noted, Newspapers and news sites are constantly trying to use the social networking site popularity to their own benefit, – but with the head start that Twitter had over the New York Times seems they may have to try a little harder.

Google Inc alleges that developing hot news "rights" run afoul of the First Amendment. The reporting of truthful information is one of the most closely guarded forms of speech under the Constitution. The Google Inc ability to profit on hot news should be held just as closely guarded. The injunction, which is a most extraordinary remedy, can only be imposed where the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures. The Earth is not flat although it appears that way and the fact that it isn't is not hot news today but at one time was much more than hot.

## Conclusion

Google continues to conspire with the Authors Guild and other publishers to find ways to ensure that publication and Google Inc advertisement thrive on the Web. Google Inc remains optimistic about the future profitability of journalism. The Fourth Estate is too crucial a part of a functioning democracy, and the Internet too powerful a medium since telegraphs advanced, for journalism to die in transition to a Web-first approach. News organizations have more readers than ever, more sources of information than ever, more ways to report and tell stories than ever, and more potential ways to generate revenue than ever. Few recognize the fact that Muslim men, in countries where women will not even show their faces, can watch Teri Weigel perform fellatio and appear to consume a black man's semen due to the unconstitutional US Title 17 and the nonfeasance of the FCC regulating WIRE COMMUNICATIONS that allows Google Inc to broadcast Ms Weigel's original and explicit semen consumption performances. Journalism will, of course change, but the free market and free society will ensure that it won't die as long as United States remains MORALLY free and the trafficking of pornography is allowed to hide behind the apron strings of the First Amendment. Google Inc was chose not to transmit pornography in China in spite of being only a marginal search engine in a county where Ms Weigel's original performances are not allowed. Google Inc was not too big to be allowed to fail in China where the Courts may feel Google Inc is too big to be allowed to fail in the United States.

These fourteen pages are 8,183 words and repeat most of the GOOG 9696 word comment and Curtis J Neeley Jr actually agrees with portions, but does not bother repeating the monopoly arguments or footnote citations. In conclusion the definition of wire communications will be repeated in bold in an offhand chance the FCC will finally notice the law they have ignored until now.

(51) WIRE COMMUNICATION<sup>1</sup>. --The term "wire communication" or "communication by wire" means the **transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire**, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, **apparatus**, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

Apparatus<sup>2</sup> [ap-uh-rat-uhhs,- rey-tuhs] noun, plural -tus, -tus-es.

1. a group or combination of instruments, machinery, tools, materials, etc., having a particular function or intended for a specific use: Our town has excellent fire-fighting apparatus.
2. any complex instrument or mechanism for a particular purpose.

Computers known as "servers" are on one end of the wire and personal computers using various browsers are connected to the other end of the wire. This was typed slowly by a severely brain damaged but interested citizen using one arm from a hospital bed.

---

<sup>1</sup> The Communications Act of 1934 p.8 ¶ 51 and USC 47 § 153 ¶ 52

<sup>2</sup> apparatus. (n.d.). Dictionary.com Unabridged. Retrieved September 13, 2010, from Dictionary.com website: <http://dictionary.reference.com/browse/apparatus>