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LESSONS FROM STANDARD OIL FOR FACEBOOK AND GOOGLE

Facebook and Google are this country's modern day Standard Oil. Over the past 20 years, they have strategically created a monopoly involving communications on the Internet.¹ While Google's search engine and Facebook's social platform have provided services some believe have served the public good, they have also perpetrated acts over many years illustrative of an abuse of power.² Chris Hughes, co-founder of Facebook, said Facebook's CEO, "Mark's [Zuckerberg] influence is staggering, far beyond that of almost anyone else in the private sector or anyone else in government."³ Because Mr. Zuckerberg controls most of Facebook's voting shares, the company's board of directors "works more like an advisory committee."⁴ As a result, Mark Zuckerberg alone can determine Facebook's, and its affiliated companies Instagram and WhatsApp's, algorithms, thereby controlling the content users see on each of these platforms. Similarly, John D. Rockefeller, a founder and major owner of Standard Oil, controlled about 90 percent of U.S. refineries and pipelines by the 1880s.⁵

¹ "Google to Cite Rivals and Privacy in U.S. Lawsuit Defense" by Gerrit De Vynck, Bloomberg Businessweek, dated October 2, 2020, which cites Google's control of approximately 90% of the search engine market on the Internet. While Facebook and Google may be losing some users to Pinterest and Twitter, they each still dominate in their respective markets. "Facebook marked its lowest market share (63%), while Youtube noted its highest monthly market share in 2018, reaching almost 10%" as reported in the article "Facebook Losing Users To Pinterest, Youtube And Twitter (Market Share By Region)" by Nina Angelovska, Forbes, January 7, 2019. Note: Facebook and Google have much greater power and financial resources than their competitors like Twitter. For the quarter ended September 30, 2020, Alphabet, Inc., parent company of Google and YouTube, reported \$20,129,000,000 and Facebook, Inc. reported \$16,080,000,000 in cash, cash equivalents and restricted cash at the end of the period, respectively. In contrast, Twitter reported \$1,897,448,000 in cash, cash equivalents and restricted cash at the end of the same period.

² See *Viacom Int'l Inc., v. YouTube*, 676 F.3d. 19, (2nd Cir, 2012), in which the Second Circuit found the record sufficient to support further inquiry into triable issues of material fact concerning YouTube's specific knowledge of copyright infringement of Viacom's and other major media organizations' programs. Footnote 10 below contains specific examples cited by the Second Circuit.

³ "I Co-Founded Facebook. It is Time to Break it Up," opinion by Chris Hughes, The New York Times, dated May 9, 2019.

⁴ *Id.*

⁵ "John D. Rockefeller," History.com Editors, original dated April 9, 2010 and updated October 9, 2019.

Standard Oil under Rockefeller's leadership was accused of abuse of power by engaging in manipulative pricing and colluding with railroads to take out Standard Oil's competitors in order to gain a monopoly in the oil industry.⁶ This paper reviews solutions proposed to address Facebook and Google's monopolies, abuses of power and threats to democracy, a free economy and culture.

The 'Hearts and Mind' Antitrust Action

Several different antitrust laws prohibit business practices that unreasonably deprive consumers of the benefits of competition, resulting in higher prices for products and services.⁷ One of them is the Sherman Antitrust Act, which makes it a crime to monopolize any part of interstate commerce. An unlawful monopoly exists when one firm controls the market for a product or service, and it has obtained that market power, not because its product or service is superior to others, but by suppressing competition with anticompetitive conduct.⁸

An antitrust lawsuit is also a "hearts and mind" action meaning it represents a class struggle. The Ohio Senator John Sherman, sponsor of the Sherman Anti-Trust Act of 1890, said "[I]f we will not endure a king as a political power, we should not endure a king over production, transportation and sale of any of the necessities of life. If we would not submit to an emperor, we should not submit to an autocrat of trade with power to prevent competition and to fix the price of any commodity."⁹ The Internet was promised as an open platform to

⁶ *Id.*

⁷ U.S. Department of Justice website, Antitrust Division home page.

⁸ *Id.*

⁹ This quote can be found in "I Co-Founded Facebook. It is Time to Break it Up," opinion by Chris Hughes, The New York Times, dated May 9, 2019.

connect all Americans.¹⁰ Instead, today, we have a ruling class comprised of a small group of controlling individual owners of Google and Facebook that monopolize the Internet as well as collect all data from us via websites on computers/laptops and apps on mobile devices. The global pandemic has made the Internet more essential than ever. Working from home and homeschooling has increased online activity. School assignments are being handed out on Google Classroom. Meetings are happening on Zoom, Google Hangouts and Microsoft Teams.¹¹ Because the Internet is a major source of news, broadcasts, media and communications, there is no way for Americans to communicate without such collection of their data, surveillance or censorship of content by Facebook or Google as well as the U.S. government.¹²

The U.S. Department of Justice, Federal Trade Commission and 11 states filed an antitrust lawsuit against Google, a unit of its parent company Alphabet, Inc., in October 2020 that may result in the breakup of Google and/or its parent company.¹³ "Google is the gateway to the internet and a search advertising behemoth," U.S. Deputy Attorney General Jeff Rosen told reporters. "But as the antitrust complaint filed today explains, it has maintained its monopoly power through exclusionary practices that are harmful to

¹⁰ The following excerpts can be found in Remarks by Vice President Al Gore, Office of the Vice President, THE WHITE HOUSE, transcript of Vice President Gore's speech at Digital Divide Event, dated Tuesday, April 28, 1998: "We meet today to break down walls. At each critical point of our nation's history, we have acted on our duty to give every citizen the chance to live out the American Dream. In the Agricultural Age, we ensured that land went not only to the privileged few, but to the common yeoman farmer. In the Industrial Age, we focused on making sure that all Americans -- and not just the industrial barons -- had access to capital. Today, in the Information Age, connecting all our people to a universe of knowledge and learning is the key to ensuring a lifetime of success; and "[w]e can let technology be a negative force that furthers divisions, or we can use it [Internet] to connect all Americans together and give them the same shot at success."

¹¹ "The Virus Changed the Way We Internet," by Ella Koeze and Nathaniel Popper, The New York Times, dated April 7, 2020.

¹² "Court Approves Warrantless Surveillance Rules While Scolding F.B.I." by Charlie Savage, The New York Times, dated September 5, 2020.

¹³ "Oracle's Hidden Hand is Behind the Google Antitrust Lawsuits," by Naomi Nix, Los Angeles Times, dated December 24, 2020.

competition."¹⁴ Politicians and consumer advocacy groups have long accused Google of abusing its dominance in online search and advertising to stifle competition and boost its profits. Critics contend that multibillion-dollar fines and mandated changes in Google's practices imposed by European Union regulators in recent years were insufficient and structural changes are needed for Google to change its conduct.¹⁵

On December 16, 2020, 10 states led by Republican attorneys general filed a lawsuit against Google accusing it of "anti-competitive conduct" in the online advertising industry, including a deal to manipulate sales with rival Facebook.¹⁶ It targeted the heart of Google's business — the digital ads that generate nearly all of its revenue, as well as all the money that its corporate parent, Alphabet Inc., depends upon to help finance a range of technology projects. On December 17, 2020, 35 attorneys general filed an antitrust complaint against Google alleging that it has an illegal monopoly over the online search market that hurts consumers and advertisers.¹⁷ "Consumers are denied the benefits of competition, including the possibility of higher quality services and better privacy protections. Advertisers are harmed through lower quality and higher prices that are, in turn, passed along to consumers," Colorado Attorney General Phil Weiser said in press release.¹⁸ Led both by progressives, such as Senator Elizabeth Warren, and conservatives like President Trump, the People are taking legal action to limit Google's power under federal and state antitrust laws with their

¹⁴ This quote can be found in the transcript of National Public Radio's report, "*Google Abuses Its Monopoly Power Over Search, Justice Department Says In Lawsuit*", dated October 20, 2020, located at NPR's website as follows: <https://www.npr.org/transcripts/925736276>

¹⁵ "*The EU Hits Google With a Third Billion-Dollar Fine. So What?*" by Nitasha Tiku, *Wired*, dated March 28, 2019 located at *Wired's* website as follows: <https://www.wired.com/story/eu-hits-google-third-billion-dollar-fine-so-what/>

¹⁶ "*Ten States Sue Google for 'Anti-Competitive' Online Ad Sales,*" by Jake Bleiberg and Michael Liedtke, *Associated Press*, dated December 16, 2020 located at AP's website as follows: <https://apnews.com/article/media-lawsuits-texas-ken-paxton-e1edb57610e7141f504d60e32396bbc9>

¹⁷ "*Dozens of states file anti-trust lawsuit against Google,*" by the *Associated Press*, dated December 17, 2020, located at AP's website as follows: <https://abcnews.go.com/Business/wireStory/38-states-file-anti-trust-lawsuit-google-74783989>

¹⁸ *Id.*

different variations on how they believe Google is abusing its immense power to do bad things that harm other businesses, innovation and even consumers who find its services to be indispensable.¹⁹ Google has stated that it believes these complaints are without merit and will defend itself vigorously.²⁰ This is the first major antitrust lawsuit against a large technology company since the U.S. Department of Justice's antitrust lawsuit against Microsoft in the late 1990s, which took 10 years to resolve. This is significant because Google has stated that it will vigorously oppose the Department of Justice's antitrust lawsuit, and as such, the antitrust litigation against Google may last many years. Even if Google or its search and search advertising contracts are voided, it will likely remain a significant player in the internet search engine market. Nevertheless, this action appears to be reigning in Facebook and Google's dominance over our communication systems, access to information, and economy.²¹ My comment here is that the FTC is also going after facebook. Facebook controls access to people, google to information. Amazon – goods, Apple – devices, Microsoft – desktop – so as a group, it is more than a simple monopoly. Maybe just mention but it is the real issue. Google is only one part of the puzzle.

Public Relations

Google has done an extraordinary job with public relations. It has presented itself as a sympathetic, well-meaning tech company. Its mission statement was “Do No Evil” in its initial public offering documents with the U.S. Securities and

¹⁹ “Elizabeth Warren Proposes Breaking Up Tech Giants Like Amazon and Facebook” by Astead W. Herndon, New York Times, March 8, 2019.

²⁰ Google appears likely to vigorously oppose the U.S. Department of Justice, Federal Trade Commission and Attorneys General antitrust lawsuits. See Google's parent company's filing with the U.S. Securities and Exchange Commission on Form 8-K dated December 21, 2020, which can be found at the SEC's website as follows: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1652044/000119312520323272/d25115d8k.htm>. Also, in this filing, Google's parent company Alphabet, Inc. reported “The DOJ and state Attorneys General continue their investigations into certain aspects of Google's business.”

²¹ “5 Powerful Tech Companies Now Make up 18% of the Stock Market — Here's Why This Could be a Bad Thing,” by Brian Sozzi, Editor-at-Large, Yahoo Finance, dated February 3, 2020.

Exchange Commission.²² A few years later, in a public relations coup, Google got a New York Times interview in connection with its defense against Viacom's \$1 billion "massive copyright infringement" lawsuit against Google and its subsidiary YouTube. In this New York Times interview, Google's Chief Executive Officer, Eric Schmidt, effectively told a story of Viacom as the aggressor, a media company built on litigation against other media companies.²³ Viacom failed to promote itself in the press as being the true protector of creators,²⁴ allowing Google to shift blame and responsibility to Viacom to prevent copyright infringement. Nonetheless, Viacom obtained evidence during discovery in this case that the founders of YouTube (owned by Google) knew they were committing direct (not just indirect) copyright infringement when they created the company.²⁵ They intentionally allowed copyright

²² Google Inc. S-1 Registration Statement, as filed with the SEC on April 29, 2004; *see also*, "Awaiting a Compromise on YouTube," by Joe Nocera, The New York Times, dated March 17, 2007. Note that YouTube was formed in 2004 and acquired by Google in 2006.

²³ "Google Chief Executive Criticizes Viacom" by The New York Times, dated July 13, 2007.

²⁴ "Viacom files \$1 billion lawsuit against YouTube and Google" by The New York Times, dated March 13, 2007. *See also*, "Viacom Slings More Mud at Google in YouTube Copyright Case," by eWeek.com, dated April 19, 2010, in which Viacom's vice president and assistant general counsel stated "Google's public relations machine has been trying to shift the blame to us, because some Viacom employees did in fact use YouTube for promotional purposes. But this is a problem YouTube and Google created, not Viacom. We asked for the ability to identify to YouTube which clips were promotional, but YouTube and Google did nothing because they didn't want to know. In the law this is called "*willful blindness*." [italics added]

²⁵ The Second Circuit concluded the district court's summary judgment to YouTube on all clips-in-suit was premature due to the record in the case, which included the following examples: "YouTube founder Jawed Karim prepared a report in March 2006 which stated '[a]s of today [,] episodes and clips of the following well-known shows can still be found [on YouTube]: Family Guy, South Park, MTV Cribs, Daily Show, Reno 911 [and] Dave Chapelle [sic]'...although YouTube is not legally required to monitor content...and complies with the Digital Millennium Copyright Act ("DMCA") takedown requests, we would benefit from *preemptively* removing content that is blatantly illegal and likely to attract criticism". In a July 2005 e-mail exchange between YouTube founder Chad Hurley and his co-founders, Mr. Hurley stated "we need to reject these [budlight commercials] too," co-founder Steve Chen responded "can we please have these in a bit longer? Another week or two can't hurt," and Karim replied saying he "added back in all 28 bud videos." Email exchanges dated August 9, 2005, Chad Hurley asked his co-founders to start being diligent about rejecting copyrighted inappropriate content, saying "there is a cnn clip of the shuttle clip on the site today, if the boys from Turner would come into the site, they might be pissed." Then Steve Chen responded "but we should just keep that stuff on the site. I really don't see what will happen, what? Someone from cnn sees it? He happens to be someone with power? He happens to want to take it down right away, he gets in touch with cnn legal. 2 weeks later, we get a cease and desist letter, we take the video down." Again, Karim agreed, saying "the cnn space shuttle clip, I like. We can remove it once we are bigger and better known, but for now that clip is fine." *Viacom Int'l Inc., v. YouTube*, 676 F.3d. 19, (2nd Cir, 2012).

infringement on their site and willfully failed to take precautions against it. Although Google marketed YouTube as a site where one could “Broadcast yourself,” Google was aware that users uploaded not just their own videos but infringements of many copyrightable works.²⁶ This case settled after the Second Circuit’s decision.

The take-away is that while evidence showed that Google, owner of YouTube, was the bad actor with intent to directly infringe Viacom and other creators’ copyrightable works, Google managed to influence the public’s perception to believe that it has good intentions, its technology is positive, and it does no evil.²⁷ As such, a thoughtful public relations campaign is needed to counter Google’s PR campaign while acknowledging the positive aspects of its search engine and product offerings. One example is a competitor Oracle’s lobbying efforts with regulators and law enforcement agencies in federal government and more than 30 states, the European Union, Australia and at least three other countries to raise awareness of Google’s monopoly and predatory business practices.²⁸ Oracle prepared a “black box” presentation for officials in more than 12 of the states that have sued Google for antitrust violations. But oracle is no angel either, this will have to be discussed eventually. This presentation showed how Google tracks users’ personal information, collects users’ location details – even when the phones aren’t in use – and confirmed pressure tactics employed by Google.²⁹ Although Google has allies in Congress, state legislatures and executive branches, particularly the Democratic

²⁶ *Id.*

²⁷ "In 2006, a judge might not have heard of YouTube, let alone used it," said Eric Goldman, associate professor at Santa Clara University School of Law and director of the High Tech Law Institute. "By 2010, a lot of judges know YouTube before it even gets into their court room. I'm guessing most judges have positive thoughts about YouTube." "*Viacom Slings More Mud at Google in YouTube Copyright Case*," by eWeek.com, dated April 19, 2010.

²⁸ See footnote 13 above on page 3 as follows: "Oracle’s Hidden Hand is Behind the Google Antitrust Lawsuits," by Naomi Nix, Los Angeles Times, dated December 24, 2020.

²⁹ *Id.*

party, it would be wise for Google to be more transparent with the public and address their users' and their representatives' concerns. Why would it be wise? They are getting away with it. In a longer version the practices of all these tech cos needs to be explored

NGOs/Advocacy Groups

One group pursuing a different PR strategy is a nonprofit organization called Center for Humane Technology. Its founder, Tristan Harris, broadened the conversation about Google's monopoly and predatory business practices. While Mr. Harris was an employee for Google as one of its Design Ethicists, he created a viral presentation entitled, "A Call to Minimize Distraction & Respect Users' Attention," warning about the technology industry's race to capture human attention.³⁰ After he gave two TED talks and a 60 Minutes interview, he sparked the Time Well Spent movement.³¹ The Humane Technology's mission is to drive a comprehensive shift toward humane technology that supports our well-being, democracy, and shared information environment. They have run a successful PR campaign in media, e.g., a recently released Netflix documentary called *Social Dilemma*, testified before Congress and mobilized millions of advocates.

Another insider, a former Facebook founder has made similar statements to talk about how a monopolized Internet endangers democracy.³² Former insiders of Google and Facebook like Tristan Harris and Chris Hughes advocate for "humane" changes in the technology, business model and these companies' conduct in our communities. But, these insiders had to leave Google and Facebook to try to effect

³⁰ See the Center for Humane Technology's website at www.humanetech.com.

³¹ *Id.*

³² See footnote 3 above.

change. They are critical voices in the public, and consequently, government and private parties' PR campaigns while the government (regulatory) and private parties (in litigation) negotiate with the tech giants. A lesson that can be drawn from Standard Oil you will need to outline what the standard oil result was, its antitrust lawsuits and breakup is potential settlements with Facebook and Google undoing some of the harm they have caused, including censorship, misinformation and anti-competitive conduct. Even with the outrageous murder of George Floyd earlier this year that sparked national, and international, civil rights protests for months, Google recently terminated a Black woman engineer employee for voicing criticism of racial bias in the design of Google's algorithms and the company's hiring/workplace practices.³³ Although Google has paid European countries over three billion dollars for violations of European privacy laws, also known as GDPR, on three different occasions, Google has not changed its business practices.

Other organizations like the ACLU advocate for less regulation of "free speech" by Facebook or Google.³⁴ Another advocacy group, the Knight Foundation, a private national organization founded by brothers John S. and James L. Knight who once published newspapers, generally views the rise of technology as a threat to democracy, "free speech" and journalism, and it has invested in university research to advance studies in this field.³⁵ There should be a discussion at some point as to how everyone thought the internet would increase free speech and democracy Advocacy

³³ "Google's star AI ethics researcher, one of a few Black women in the field, says she was fired for a critical email," The Washington Post, dated December 3, 2020.

³⁴ "Facebook Shouldn't Censor Offensive Speech," by Vera Eidelman, Staff Attorney, ACLU Speech, Privacy, and Technology Project, dated July 20, 2018 at [www. https://www.aclu.org/blog/free-speech/internet-speech/facebook-shouldnt-censor-offensive-speech](https://www.aclu.org/blog/free-speech/internet-speech/facebook-shouldnt-censor-offensive-speech)

³⁵ "Strengthening democracy in the digital age: Knight's \$50 million investment in a new field of research" by Sam Gill, dated July 21, 2019 at <https://medium.com/trust-media-and-democracy/strengthening-democracy-in-the-digital-age-knights-50-million-investment-in-a-new-field-of-1fc4fadf5ec4>

groups like the ACLU are aligned with conservative groups advocating for less regulation because, in their shared view, regulation would make it easier for Facebook and Google to censor different viewpoints, which The Heritage Foundation claims their algorithms are already doing!³⁶

In contrast, Google appears to advocate both extreme liberal and conservative views of speech. In *Garcia v. Google, Inc.*, Google appealed the Ninth Circuit majority's opinion led by Judge Kozinski in which it held an actress Cindy Lee Garcia, who was paid \$500 for two or three days of work in a low budget film entitled *Desert Warriors*, had a copyright in her two to three minute performance, and as a result, she had a right to require Google to take down a different movie trailer with her misappropriated performance from YouTube.³⁷ The producer of *Desert Warriors* failed to get a signed "work-for-hire" agreement from Garcia. This meant he did not have Ms. Garcia's consent to use her performance from *Desert Warriors*, misappropriate it by changing her lines and replacing her voice with another person's voice in the trailer for *Innocence of Muslims*, another film created by the same producer depicting the Prophet Muhammed as "a murderer, pedophile, and homosexual." The producer misappropriated Garcia's performance with words she said she never would have consented to, such as "Is your Mohammed a child molestor? Our daughter is but a child." The trailer for *Innocence of Muslim*, including Garcia's dubbed scene, was released on YouTube and went viral. Ms. Garcia received death threats. There was overwhelming backlash on social media.

³⁶ *Free Enterprise Is the Best Remedy for Online Bias Concerns.* by Diane Katz, The Heritage Foundation, dated November 19, 2019

³⁷ *Garcia v. Google, Inc.* 786 F.3d 733 (9th Cir. 2015)

But, more importantly, this was misappropriated speech. Yet, Google employed its vast resources and challenged Garcia, and even the Ninth Circuit. Google appealed. In an en banc decision, a three-judge panel overturned the Ninth Circuit majority's opinion, holding that Garcia did not have a copyright in the original scene. Because to do so, the panel argued, would make it difficult for any film with multiple actors and other creators to be made.³⁸ Google/YouTube denied Garcia's takedown request of misappropriated speech on the ground that she did not have a copyright interest. According to copyright law experts, Google used copyright law from a different doctrine governing "joint work" (which Garcia did not want to argue because she didn't want any part in *Innocence of Muslims*, and as such, it was not a joint work), applied it to this new takedown situation under the Digital Millennium Copyright Act ("DMCA"), and created a new doctrine making it more difficult for future contributors to a film to claim copyright interest in their individual performance.

In the United States, there is no such thing as "free speech."³⁹ As our Supreme Court has shown us, "decisions about what is and is not protected in the realm of expression will rest not on principle or firm doctrine but on the ability of some persons to interpret – recharacterize or rewrite – principle and doctrine in ways that lead to the protection of speech they want heard and the regulation of speech they want silenced."⁴⁰ There are several different theories of the importance of the First Amendment. Justice Holmes' view was that competition is the best test of truth in the

³⁸ *Id.*

³⁹ *There's No Such Thing as Free Speech and It's a Good Thing, Too*, by Stanley Fish, Oxford University Press, 1994, which can be found at https://web.english.upenn.edu/~cavitch/pdf-library/Fish_FreeSpeech.pdf

⁴⁰ *Id.*

“marketplace of ideas,” a variation of Milton’s statement in *Areopagitica* (1644) as follows:

“And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple: whoever knew Truth put to the worse, in a free and open encounter?”

Justice Brandeis represented that every “idea is an incitement”⁴¹ and ideas, or free speech, and assembly may be restricted only if such restriction is required to protect the state from serious injury, political, economic or moral.⁴² Justice Brandeis said there would be more joining together, less strife and good citizenship if we had the freedom to speak and assemble, which were “functions essential to effective democracy.”⁴³

Justice Harlan’s dissenting opinion in *U.S. v. White* sets forth another major theory. He said private discourse is essential for democracy to thrive. Were third-party bugging a prevalent practice, it might “smother that spontaneity -- reflected in frivolous, impetuous, sacrilegious, and defiant discourse that liberates daily life.”⁴⁴

Insofar as people’s information comes from the Internet, censorship of ideas is counterproductive to a “marketplace of ideas.” Google and Facebook’s monopoly in internet communications whereby they determine what information people see chips away at an open “marketplace of ideas” for encounters of truth and falsity. And so, there is a fundamental lack liberty of expression as there is no platform for it. To be a democratic citizen, one must be able to express thoughts.

⁴¹ *Gitlow v. New York*, 268 U.S. 652 (1925)

⁴² *Whitney v. California*, 274 U.S. 357 (1927)

⁴³ *Id.*

⁴⁴ *U.S. v White*, 401 U.S. 745 (1971) dissenting.

The *Garcia v. Google* case was about speech falsely attributed to Ms. Garcia on Google's YouTube site. She objected to showing the falsely attributed speech because she found it offensive, did not consent and did not want to be associated with the expressive work. The marketplace of ideas did not correct the falsity, or speech falsely attributed to Garcia, by the producer of *Innocence of Muslims*. In fact, the opposite occurred. The film went viral, and although Google was in a position to prevent the falsely attributed speech from continuing to go viral, it strategically chose not to. Because it did not have a legal obligation under what legal theory? and it fought to ensure under copyright law that it did not have a legal obligation to do so.

Third, the Internet is available to us 24/7. It is always open for business. Facebook and Google want everyone to be on their platforms at all times because it leads to more advertising dollars for them. Google controls 90% of global searches on the Internet. Facebook, actually Mark Zuckerberg who holds majority of the voting shares, controls over 60% of the market for online social media. Both Facebook and Google have strategically interfered with the privacy of their users. Imagine what it would be like if journalists could gather citizens' personal information or track their locations even when they were not using their cell phones. It is *as if* users are being bugged. But instead of the government, it is two large, wealthy private corporations that are barely accountable to anyone, other than their missions to make a profit for their shareholders. With the loss of privacy, we lose the spontaneous, honest, everyday conversations that Justice Harlan talked about in his dissent in *U.S. v. White*. We lose the private life that sustains us and from which we develop our core values, beliefs and support structures in order to engage in public discourse. Our government and private citizens should hold Facebook and Google

accountable for their monopoly of information, systems of communication, and the entire structure of the Internet. We know from former Ohio Senator Sherman “[i]f we would not submit to an emperor, we should not submit to an autocrat of trade with power to prevent competition and to fix the price of any commodity.” If we were to submit to Facebook and Google’s monopolies of the Internet, it would be no different than being under the control of a king.

Congress – Facebook and Google Support (Certain) Regulation

Mark Zuckerberg supports new regulation of the Internet.⁴⁵ He believes “we need new regulation in four areas: harmful content, election integrity, privacy and data portability.”⁴⁶ He argues we need a standardized approach to decide what counts as terrorist propaganda, hate speech. Nevertheless, Internet companies each having their own policies and procedures. Mark Zuckerberg would like the government to set up third-party bodies to set standards governing the distribution of harmful content and to measure companies against those standards. This would require companies to build internal systems to meet these standards and disclose transparency reports on a quarterly basis. This approach seems similar to existing privacy laws in Europe, or GDPR, which are disclosure driven and costly for companies. With regard to election integrity, Mark Zuckerberg advocates for updated election legislation to take into account the use of data and targeting in modern-day campaigns. Also, he agrees with adopting the GDPR, Europe’s strict privacy rules, in the U.S. and globally. Facebook already has to comply with GDPR since it operates in Europe. California has the strictest privacy laws in the U.S., effective as of January 1, 2020, and some

⁴⁵ “Mark Zuckerberg: The Internet needs new rules. Let’s start in these four areas.”, opinion by Mark Zuckerberg, The Washington Post, dated March 30, 2019.

⁴⁶ *Id.*

intellectual property lawyers say California's new privacy laws are like the GDPR. Thus, Facebook should already be in compliance with these privacy rules but it is not. Zuckerberg has provided no details of what new privacy legislation would accomplish, other than uniformity on a global level. Again, this change would benefit large, public companies with a global footprint like Facebook but not smaller Internet companies like Twitter, which operates only in the U.S. Zuckerberg offers no sensible justification for more regulation of the Internet.

Twitter banned all political ads about one year before the presidential election in November 2020. Mark Zuckerberg's calls for legislation to regulate political ads arguably would not apply to Twitter, or they could place undue requirements on Twitter, an Internet company that chooses not to accept political ads. Lastly, Mark Zuckerberg advocates for a standard data transfer format and the open source called Data Transfer Project, so users can transfer data from one service to another service presumably without the services facing any liability for the transfer of such content. One of the problems with Mark Zuckerberg's approach as a solution to Facebook and Google's monopolies is that, of course, they have vast resources to pay for greater compliance costs associated with more regulation. The unfortunate effect of more regulation for all Internet companies is Facebook and Google may use higher compliance costs associated with more regulation as a means to take out smaller competitors from the market. For instance, Twitter already has some of the most advanced hate speech, election, and privacy policies of any Internet company. Twitter's challenge is enforcement of their policies. With Facebook pushing for standardization through regulation, the likely effect will be a lessening in quality of

Twitter's already-existing policies. Again, it is another tactic by the monopolies to control competition in the Internet market.

Facebook and Google have benefited from the safe harbor under the DCMA and Section 230 of the Communications Decency Act, which generally shield them from liability as conduits of users' content. While both companies have grown into media or publishing companies themselves, beyond mere conduits of information, with technology, resources and know-how, it is time to treat them as what they are: monopolies with dominance over the Internet. If any regulation is going to be passed, it should be to update the DCMA and Section 230 of the Communications Decency Act to make them liable for their own conduct and conduct of others that Google and Facebook are in a position of power to control and stop.