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To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Monday, August 31, 2020 11:30:53 AM
Attachments: [NetChoice Response to Ohio RFC on Self-Preferencing in Search.pdf](#)

Please find attached our comments to the request for comments

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Statement for the Record regarding
Consumer Sales Practices Act (R.C. 1345.01 *et seq.*)

Carl Szabo

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The logo for NetChoice, featuring the word "NetChoice" in a blue, sans-serif font. The "Net" is in a darker blue, and "Choice" is in a lighter blue. The logo is set against a light blue rectangular background.

**Self-Preferencing in Search Results:
Good for Consumers**

August 2020

NetChoice¹ is a trade association of leading e-commerce and online companies promoting the value, convenience, and choice of internet business models. Our mission is to make the internet safe for free enterprise and for free expression. We work to promote the integrity and availability of the global internet and are engaged on issues in the states, in Washington, and in international internet governance organizations.

We previously twice testified before the Attorney General's two informational sessions on antitrust held in Cincinnati and Cleveland where we outlined the robust competition in the markets and the harm to small Ohio businesses if the Attorney General uses antitrust authority to break apart large technology platforms.²

Summary

Self-preferencing is a new term meant to cast doubt on an old concept: vertical integration. Under the consumer welfare standard, vertical integration is blocked only if it harms consumers. Because evidence has shown that vertical integration almost always benefits consumers, critics of the tech industry have had to rebrand vertical-integration practices as "self-preferencing." But whatever term is used to describe vertical integration, the State should not mistake big for bad and hamper innovative practices that benefit consumers.

Digital platforms and marketplaces have benefited consumers massively. Based on the consumer welfare standard, this is an open-and-shut case: Businesses like Amazon and Google connect third parties, including their competitors, with billions of potential customers. They also connect them to tens of thousands of products, including those that they themselves make. So not only do consumers have more choices to choose from, they also have access to higher-quality products at lower costs.

These benefits are not unique to the digital sphere, however. For decades, brick-and-mortar stores like Costco and Walmart have used vertical integration to cut costs, reduce prices, and attract customers. At the same time, these stores—like their digital competitors—have had to compete on quality. Self-preferencing is of little use if consumers reject the product.

To be sure, vertical integration can be abused. But that has not occurred with digital platforms or marketplaces. To the contrary, these businesses have increased competition, improved quality, and cut prices. That truth should not be submerged simply because populist antitrust wants to turn the clock back to 1960.

¹ NetChoice is a trade association of e-Commerce and online businesses, at www.netchoice.org The views expressed here do not necessarily represent the views of every NetChoice member company.

² See, NetChoice Testimony before The Ohio Senate Judiciary Committee Presentations on Antitrust Issues October 17, 2019 Cleveland, Ohio, <https://netchoice.org/wp-content/uploads/2019/10/NetChoice-Testimony-Ohio-Senate-Judiciary-17-Oct-2019.pdf>, NetChoice Testimony before The Ohio Senate Judiciary Committee Presentations on Antitrust Issues October 28, 2019 Cincinnati, Ohio, <https://netchoice.org/wp-content/uploads/NetChoice-Testimony-Ohio-Senate-Judiciary-28-Oct-2019.pdf>.

What is Past is Prologue: Big-is-Bad Gut Instincts

Antitrust laws in the United States are meant to protect the benefits consumers receive from competitive markets.³ Businesses that have to compete will usually cut prices while increasing the quality of their products or services.⁴ And ever since the Sherman Act became law in 1890, “protecting consumers from monopoly prices’ has been ‘the central concern of antitrust.’”⁵ Antitrust laws also “stimulate businesses to find new, innovative, and more efficient methods of production,” which also benefits consumers.⁶

But for much of our history, antitrust relied on “confused doctrines that pursued populist notions” that mistook big for bad.⁷ By following these populist appeals, the government’s enforcement decisions “led to contradictory results that purported to advance a variety of social and political goals at the expense of American consumers.”⁸ In the Sherman Act’s first decade, for example, the Supreme Court held that the law was meant to protect “small dealers and worthy men.”⁹ Decades later, the Court reaffirmed that interpretation, holding that antitrust laws are meant to protect “viable, small, locally owned business” even when that protection means “higher costs and prices.”¹⁰

But in the 1970s, economists were successful in anchoring antitrust analysis in consumer welfare.¹¹ They were so successful, in fact, that the United States became the first country to root antitrust analysis in economics.¹² Under the consumer welfare standard, antitrust uses economic learning and evidence to assess whether a business’s actions benefit or harm consumers.¹³ Business decisions that benefit consumer welfare are allowed; those that harm consumer welfare are blocked. Economists, antitrust scholars,¹⁴ and U.S. courts¹⁵ agree that the consumer welfare standard has succeeded in protecting consumers. That success came only once the government abandoned its big-

³ DEP’T. OF JUSTICE, *Antitrust Enforcement and the Consumer* (last accessed Mar. 6, 2020), <https://www.justice.gov/atr/file/800691/download>.

⁴ *Id.*

⁵ *Apple v. Pepper*, 139 S. Ct. 1514, 1525 (2019) (internal citation omitted).

⁶ *Id.*

⁷ Joshua D. Wright et al., *Requiem for a Paradox: The Dubious Rise & Inevitable Fall of Hipster Antitrust*, 51 ARIZ. ST. L.J. 293, 294, 299 (May 2019), <http://arizonastatelawjournal.org/wp-content/uploads/2019/05/Wright-et-al.-Final.pdf>.

⁸ *Id.* at 294.

⁹ *United States v. Trans-Mo. Freight Ass’n*, 166 U.S. 290, 323 (1897).

¹⁰ *Brown Shoe Co. v. United States*, 370 U.S. 294, 333, 344 (1962).

¹¹ *Id.*

¹² Roger D. Blair & D. Daniel Sokol, *Welfare Standards in U.S. and E.U. Antitrust Enforcement*, 81 *Fordham L. Rev.* 2497, 2508-09 (2013).

¹³ *Id.*

¹⁴ Joshua D. Wright & Douglas H. Ginsburg, *The Goals of Antitrust: Welfare Trumps Choice*, 81 *FORDHAM L. REV.* 2405, 2406 (2013).

¹⁵ See, e.g., *Pac. Bell Tel. Co. v. Linkline Commc’ns, Inc.*, 555 U.S. 438 (2009).

is-inherently-bad gut instinct and aligned its legal theories of harm with economic theories of anticompetitive harms.¹⁶

But the consumer-welfare model is under attack. Concern about corporate power, income inequality, wage stagnation, and other social ills has sparked calls to “solve” social problems through populist antitrust.¹⁷ This thinking would have the United States abandon, or at least weaken, the consumer welfare standard.

By abandoning the consumer welfare standard, the United States would be following Europe’s lead. European courts have held that the E.U.’s main antitrust law, the Treaty on the Functioning of the European Union (TFEU), “is designed to prevent competition from being distorted to the detriment of the **public interest**, individual undertakings and consumers” so that “the well-being of the European Union” is protected.¹⁸ The broad concept of “the public interest” refers to yet another broad concept, “fairness.” Answering whether something is fair relies on subjective instincts, which is in part why the European Union focuses far less on economic analysis than the United States does.¹⁹

It is also why the European Union has far more government intervention in the market.²⁰ Most recently, that intervention has been in policing “self-preferencing” among U.S.-based technology firms like Google, Amazon, and Facebook.²¹ According to the European Commission, “dominant tech companies have a special responsibility to avoid favoring their own in-house products and services over competitors.”²² So even though consumers may benefit, and even though E.U. competition law does not address self-preferencing directly, self-preferencing, the argument goes, is “unfair” and therefore illegal.²³

Similar thinking about self-preferencing may be on the rise in Ohio. If accepted, it will blow apart the U.S.’s consumer-welfare approach to antitrust and turn the clock back to the 1960s, when the courts and federal government put their gut instincts about “fairness” ahead of economic evidence of consumer well-being. That would be unfortunate, to say the least.

“Self-Preferencing”: Slogan in Search of Consumer Harm

“Self-preferencing” is the latest buzzword that alleges that large digital marketplaces and platforms favor their own products and services over those of competitors. In other words, self-

¹⁶ Wright, *supra* note 6, at 305.

¹⁷ *Id.* at 294.

¹⁸ Case C-52/09, 2011 E.C.R. I-00527, ¶¶ 22-23 (emphasis added).

¹⁹ Roger D. Blair & D. Daniel Sokol, *Welfare Standards in U.S. and E.U. Antitrust Enforcement*, 81 *FORDHAM L. REV.* 2497, 2514 (2013), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4889&context=flr>.

²⁰ See generally Francesco Russo et al., *EUROPEAN COMMISSION DECISIONS ON COMPETITION 113-97* (2010).

²¹ Valentina Pop & Sam Schechner, *Google Appeals Against EU Antitrust*, *WALL ST. J.* (last updated Feb. 12, 2020), <https://www.wsj.com/articles/google-starts-appeal-against-eu-antitrust-decisions-11581516872>.

²² *Id.*

²³ *Id.*

preferencing rebrands standard vertical-integration practices,²⁴ which are widely accepted as good for consumers, to suggest something unseemly is at work. The term reflects a “general hostility to firm size regardless of its actual impact on competition or consumer welfare.”²⁵

But that hostility is about more than just firm size; it is primarily about firm type. Today’s calls to ban or restrict self-preferencing are targeted almost exclusively at digital platforms like Google and digital marketplaces like Amazon.²⁶ Indeed, despite brick-and-mortar marketplaces engaging in vertical-integration practices for decades, those practices became a problem only once certain politicians and competitors began turning against the technology industry—***even though consumers’ ability to switch digital providers is vastly easier than switching to a different physical store.***

In fact, similar vertical integrations occur throughout the American economy, such as Gillette “preferring” to include its own replacement blades with its razors or Coca-Cola “preferring” its own beverages in its vending machines. Examples of brick-and-mortar businesses “preferencing” their own products are nearly limitless. Consider:



CVS Health
Gold Emblem
Beauty 360



Kirkland Brand products



Sam’s Club
Great Value
Equate



Townhouse
Edwards Coffee
Bel Air Frozen Food
Busy Baker Cookies & Crackers

Vertical integration involves the same practices in online marketplaces as it does in brick-and-mortar marketplaces. But critics of American tech want antitrust to be enforced only against tech. So to get around the problem of enforcing antitrust policies equally, critics have invented a new term: self-preferencing. This term allows critics to discriminate against Big Tech discreetly: Brick-and-mortar

²⁴ Maurits Dolmans & Tobias Pesch, *Should We Disrupt Antitrust Law?*, Cleary Gottlieb Steen & Hamilton LLP 10 (July 15, 2019), <https://www.clearygottlieb.com/-/media/files/should-we-disrupt-antitrust-law-pdf.pdf>.

²⁵ Wright, *supra* note 6, at 341.

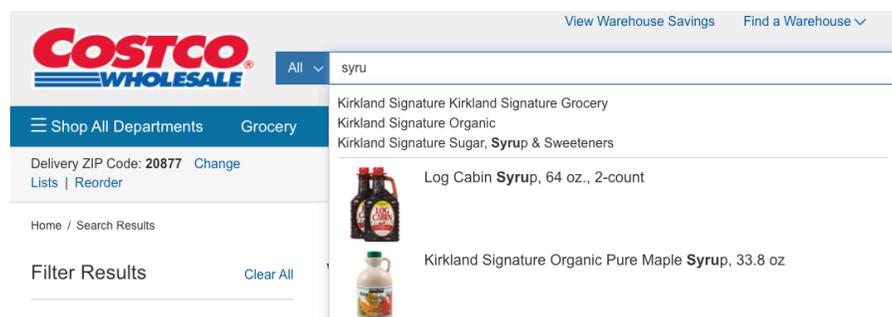
²⁶ See, e.g., Lina M. Khan, *Amazon’s Antitrust Paradox*, 126 *YALE L.J.* 710, 792-97 (2017).

marketplaces engage in good “vertical integration”; online marketplaces engage in bad “self-preferencing.”

Discrimination Against Digital Platforms & Marketplaces

This dichotomy of vertical integration versus self-preferencing is intellectually dishonest. To understand why, start by considering big-box stores like Costco and Walmart. Costco is the second-largest retailer in the United States, operates 543 stores here, boasts over 98 million cardholders, and had net sales of over \$149 billion last year.²⁷ Even more impressive, Walmart is the largest retailer in the United States, operates 4,769 stores here, and netted over \$510 billion last year.²⁸

Both Costco and Walmart own and sell their own brands, too. Costco’s Kirkland Signature brought in sales of nearly \$40 billion—about a third of its business—in 2018.²⁹ That \$40 billion was more than JCPenney’s and Macy’s sales combined, and more than Kellogg’s, Hershey’s, and Campbell Soup’s sales combined.³⁰ Kirkland is so popular among consumers that analysts credit the brand for drawing consumers to Costco’s stores, and for convincing them to pay Costco’s annual \$60 or \$120 membership fee.³¹ Walmart’s brand, Sam’s Choice, is sold in Walmart’s brick-and-mortar stores, online, and in Walmart’s subsidiary, Sam’s Club. Sam’s Club is Costco’s main competitor.



Costco preferences its own "Kirkland" brands when searching for syrup

Now consider Amazon—the world’s largest online retailer.³² Like Costco, Amazon launched in its own private brand, AmazonBasics, and uses that brand to entice consumers to become Amazon Prime

²⁷ Statista, *Number of Costco Warehouses in 2019, by Country* (last accessed Mar. 6, 2020), <https://www.statista.com/statistics/284431/number-of-costco-warehouses-2013-by-country/>.

²⁸ Statista, *Total Number of Walmart Stores in the U.S. from 2012 to 2019, by Type* (last accessed Mar. 6, 2020), <https://www.statista.com/statistics/269425/total-number-of-walmart-stores-in-the-united-states-by-type/>.

²⁹ Nathaniel Meyersohn, *How Kirkland Signature Powers Costco’s Success*, CNN BUSINESS (Jan. 10, 2019), <https://www.cnn.com/2019/01/10/business/costco-kirkland-signature-brand/index.html>.

³⁰ *Id.*

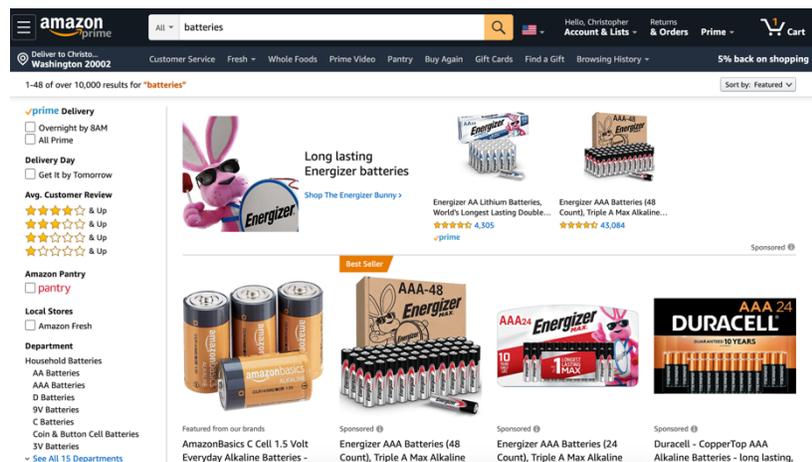
³¹ *Id.*

³² Lauren Debter, *Amazon Surpasses Walmart as the World’s Largest Retailer*, FORBES (May 16, 2019), <https://www.forbes.com/sites/laurendebter/2019/05/15/worlds-largest-retailers-2019-amazon-walmart-alibaba/#7243ea774171>.

members for an annual cost.³³ AmazonBasics got its start selling common household products like batteries.³⁴ With prices around 30% less than other brands, AmazonBasics was a quick success³⁵ and led to the company's development of more than 140 private brands.³⁶ Like Costco, Amazon sells its own products alongside its competitors' products on Amazon's website. Nonetheless, AmazonBasics constitute only 1% of Amazon's sales.³⁷

Although Amazon went from owning one private brand in 2009 to over 140 today, outside sellers saw their share of Amazon's sales grow to 58% last year.³⁸ Despite these increased sales, Amazon's decision to sell its own brands has been cast as anticompetitive. Yet this anticompetitive narrative is contradictory on its face: Amazon's products increase competition by giving consumers more choices.

But, critics claim, Amazon uses its marketplace to favor its own products over those of its competitors.³⁹ These critics allege that Amazon: (1) uses data collected from its marketplace—consumer search terms, customer reviews; (2) product placement; (3) tags like "best seller" and "Amazon's Choice"; and (4) Amazon's Alexa to favor its own brands.⁴⁰ Even if all this is true, critics have



When searching for "batteries" at Amazon, the top result is an advertisement and only the first in the series of 4 is AmazonBasics, which is also the least expensive

³³ Julie Creswell, *How Amazon Steers Shoppers to Its Own Products*, N.Y. TIMES (June 23, 2018), <https://www.nytimes.com/2018/06/23/business/amazon-the-brand-buster.html>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Jack Nicas, Karen Weise, and Mike Isaac, *How Each Big Tech Company May Be Targeted by Regulators*, N.Y. TIMES (Sept. 8, 2019), <https://www.nytimes.com/2019/09/08/technology/antitrust-amazon-apple-facebook-google.html>.

³⁷ Jack House, *The Biggest Winner on Amazon Prime Day? Amazon's Own Brands.*, BARRON'S, (July 12, 2019).

³⁸ *Id.*

³⁹ Creswell, *supra* note 32.

⁴⁰ *Id.*

not pointed to any actual consumer harm. Indeed, Amazon’s marketplace is more competitive than ever before, and consumers have more options than ever.

It’s also worth pointing out that, unlike many of their brick-and-mortar competitors, tech companies make it easy for consumers to see a product’s seller. Consider this screenshot from Amazon’s website: Although Amazon’s AmazonBasics brand is featured on the first page of results, it comes marked with “Featured from our brands.” And it’s featured directly next to Amazon’s main product competitors: Energizer and Duracell. Indeed, Amazon even lets its competitors buy prominent ad space right at the top of the search results page. With over 10,000 results for “batteries,” Amazon’s marketplace is full of options for consumers. And to the extent that it bothers some that Amazon puts its brand on the first page, that is like complaining that Macy’s puts its own branded products in highly visible sections of its stores. Yes, the point is to put the option before consumers, but ultimately consumers benefit from that (see next section). And marketplace-branded products serve as a useful **anchoring tool**: they give consumers a sense of low prices, empowering them to make smart decisions about how best to spend their money. In other words, consumers won’t be duped into spending more *unless* they want to.

Digital Platforms & Marketplaces Benefit All Consumers

Amazon’s vertical-integration practices have, in other words, benefitted Amazon’s competitors. Amazon’s not alone: Google’s, Apple’s, Facebook’s, and others’ vertical integration have benefitted both competitors and consumers. This result is because, as Senator Mike Lee explained, “platforms, by virtue of their own vertical integration, create an economic ecosystem that enables other businesses to avoid having to vertically integrate themselves.”⁴¹ The upshot of this ecosystem is that small businesses can use “the various services these platforms provide so that they can focus on their core business.”⁴²

Another reason: Digital platforms and marketplaces have to compete on quality.⁴³ Take Google Search, for example. Launched in the internet’s early years, Google Search originally returned a list of just 10 links—all to external websites.⁴⁴ These days, Google Search returns lists of countless external links and often answers consumers’ questions itself.⁴⁵

Critics have not explained why Google’s success in answering consumers’ questions is a problem, let alone an antitrust problem. Google Search competes against Microsoft’s search engine, Bing, against Yahoo!’s search engine, and against newcomer DuckDuckGo’s search engine. Google also competes with many vertical search providers, such as Yelp, Expedia, Amazon, and many others. And consumers can now find answers from a growing number of innovations, such as competing digital assistants. So if Google Search’s preference for answering questions directly was not useful,

⁴¹ Competition Policy International, *CPI Talks With Senator Mike Lee* (Mar. 1, 2020), <https://www.competitionpolicyinternational.com/cpi-talks-with-senator-mike-lee/>.

⁴² *Id.*

⁴³ Dolmans, *supra* note 23.

⁴⁴ Nicas, *supra* note 35.

⁴⁵ *Id.*

consumers would turn elsewhere. And given the continued user growth for companies like Amazon and Yelp, many users do turn to rivals for their search needs.

That Google Search is most consumers' go-to choice for many online searches reflects the platform's quality and most consumers' preferences. But that success does not mean Google Search is without competition—far from it. Yelp's user numbers have steadily increased despite its complaints to regulators, most recently boasting that it serves almost 100 million local search users.⁴⁶ In a July 2019 interview, when asked about his company's complaints about Google, Yelp's Senior Vice President of National Sales stated that:

On the sales side, I feel we can fight the fair fight and compete on our merits. I'm not an expert in public policy.

We grew 22% from Q1 2018 to Q1 2019. As an example, we've identified 250 strategic accounts we're really focused on and have entered in 60 of them. We're seeing growth, and we have years of runway ahead of us in terms of enterprise opportunity. We hold our own performance-wise.⁴⁷

Although analysis of vertical integration analysis focuses on benefits or harms to consumers, not competitors, the lack of harm by Google Search's results to even Yelp is a telling sign of robust digital competition.

Apple, too, has been accused of self-preferencing at competitors' and consumers' expense.⁴⁸ But like Amazon's and Google's practices, Apple's vertical integration benefits both groups. First, consider the allegation: Because Apple makes the iPhone, and because the iPhone's App Store is tightly controlled by Apple, and because Apple offers its own apps and services on the App Store, this must mean that Apple kneecaps its competitors.⁴⁹ Spotify, a digital music platform, for example, advanced this argument in the European Union, claiming that Apple's 30% commission fee to use the App Store harms competition because Apple Music, a competing music platform, is available on the App Store and Apple does not have to pay a fee to use its own App Store.⁵⁰

Common sense undercuts this argument. First, Apple's development of Apple Music gives consumers another choice for streaming music. Second, Apple owns the App Store, which means Apple pays for the platform's employees and funds its research and development. Third, Apple charges a 30% commission **only if** a developer uses the App Store to gain user subscriptions. So if a consumer subscribes to Spotify on Spotify's own website, Spotify pays nothing when that consumer then downloads its app from Apple. With this in mind, Spotify's argument is that it should benefit from

⁴⁶ Yelp, *Investor Presentation* (Feb. 2020), https://s24.q4cdn.com/521204325/files/doc_financials/2019/q4/Yelp-Investor-Presentation_February-2020.pdf.

⁴⁷ Sarah Sluis, *After Conquering Local Ads, Yelp Eyes National Sales* (July 10, 2019), <https://www.adexchanger.com/the-sell-sider/after-conquering-local-ads-yelp-eyes-national-sales/#more-124407>.

⁴⁸ Nicas, *supra* note 35.

⁴⁹ *Id.*

⁵⁰ Thomas Ricker, *Apple to be Formally Investigated Over Spotify's Antitrust Complaint, says Report*, *The Verge* (May 6, 2019), <https://www.theverge.com/2019/5/6/18530894/apple-music-monopoly-spotify-app-store-europe>.

Apple’s development of the App Store, which reaches millions, for free, even when it gains subscribers through the App Store and even though Apple Music is a competitor.

What common sense suggests, empirical evidence confirms: Apple’s vertical integration benefits competitors and consumers. Over 84% of those who use the App Store pay nothing and share *none* of the revenue generated by the App Store with Apple.⁵¹ And, like Amazon and Google, the App Store allows developers to reach millions of consumers that they otherwise would not be able to reach without creating their own device, platform, service—or all three. So for a 30% fee, Spotify is able to access the 45% of smartphone users—over 100 million people—in the United States who use an iPhone.⁵² Even for those who pay the 30% fee, Apple’s App Store still benefits competitors. Apple reinvests the fee into improving its App Store and developing free tools for developers to use.⁵³

To date, Apple’s App Store has generated over \$120 billion for other businesses.⁵⁴ Another benefit: Consumers who use Apple’s App Store also spend more on average than do consumers who use other app platforms.⁵⁵ And for Spotify in particular, Apple received a commission on just 680,000 of Spotify’s 100 million subscriptions.⁵⁶

“Self-Preferencing”: A Backdoor to a Duty to Deal

Critics of “self-preferencing” want to impose a duty to deal on technology firms—a radical departure from antitrust precedent.⁵⁷ Over a century ago, the Supreme Court held that “[i]n the absence of any purpose to create or maintain a monopoly, the [Sherman Act] does not restrict the long recognized right of [a] trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal.”⁵⁸ Nearly nine decades later, the Court reaffirmed that principle.⁵⁹

But this principle is not absolute. As the Court explained: “Under certain circumstances, a refusal to cooperate with rivals can constitute anticompetitive conduct and violate §2” of the Sherman

⁵¹ Apple, *App Store: Dedicated to the Best Store Experience for Everyone* (last accessed Mar. 6, 2020), <https://www.apple.com/ios/app-store/principles-practices/>.

⁵² Statista, *Share of Smartphone Users that Use an Apple iPhone in the U.S. from 2014 to 2021* (last accessed Mar. 6, 2020), <https://www.statista.com/statistics/236550/percentage-of-us-population-that-own-a-iphone-smartphone/>.

⁵³ Apple, *supra* note 50.

⁵⁴ *Id.*

⁵⁵ Sarah Perez, *App Store Generated 93% More Revenue than Google Play in Q3*, TECHCRUNCH (Oct. 11, 2018), <https://techcrunch.com/2018/10/11/app-store-generated-93-more-revenue-than-google-play-in-q3/>.

⁵⁶ Chris Crooke, *Apple Says Spotify has Exaggerated the Impact of its App Store Fees*, COMPLETE MUSIC UPDATE (June 25, 2019), <https://completemusicupdate.com/article/apple-says-spotify-has-exaggerated-the-impact-of-its-app-store-fees/>.

⁵⁷ Dolmans, *supra* note 23.

⁵⁸ *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919).

⁵⁹ *Verizon Commc’ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004) (quoting *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919)).

Act.⁶⁰ Even in these “certain circumstances,” however, there must be some “anticompetitive conduct” that harms consumers. To date, critics of self-preferencing have not shown that it harms consumers—indeed, as this testimony explains below, self-preferencing benefits both competitors and consumers.

Despite the lack of harm and ample evidence of consumer benefit, critics of self-preferencing still want to impose a duty to deal on tech firms. They want these firms to treat their competitors’ businesses the same way they treat their own business. The critics’ argument can be summed up as: because tech firms are large and because they are digital, they should not be able to prefer their own products or services, even if doing so benefits competitors, consumers, and the economy more broadly.

Embracing New-And-Innovative Business Practices:

Procompetitive and exclusionary conduct are often brewed in the same barrel: conduct that benefits consumers also tends to exclude competitors. So even with an eye toward consumer welfare, spotting the difference can be difficult. This is especially true in multi-sided markets—like those Amazon, Apple, Facebook, and Google compete in—where a platform’s conduct may benefit one group of consumers, while seemingly harming another. “Self-preferencing” is simply an old business tactic that tech platforms have adapted for the digital realm. It’s also helped platforms develop innovative products. The problem, then, is that critics don’t seem to connect innovation in products with innovation in business practices.

So without such practices, product innovation will slow. Even worse, tech’s business strategies, models, and practices benefit both consumers and the economy. And in fact, they are practices that other industries will likely adopt to remain competitive as their markets grow integrated and ever-more digital. Think about the banking industry. Not only is it moving online, it’s becoming an entirely digital market for some consumers.

Or take an industry that remains relatively old school: credit cards. Even here, innovative practices that look anticompetitive are actually good for consumers. For example, Amex requires merchants to abide by its anti-steering requirements, which prohibit merchants from encouraging patrons to use non-Amex credit cards. (Merchants may be tempted to do so because Amex charges them a higher fee than do most other companies.) Although this practice seems anticompetitive, the Supreme Court found that actually it’s procompetitive because it supports Amex’s rewards program, which is more generous than other companies’, including Visa’s and Mastercard’s.

Rather than condemn the new-and-better, or even the new-and-potentially-better, the government should celebrate the market’s innovations.

And if the concern is that American tech platforms are “hurting innovation,” as some claim, consider that tech spends more on research and development and has higher capital expenditures than almost every other industry in the country:

⁶⁰ *Id.*

Tech companies lead in R&D spending (billions of USD)

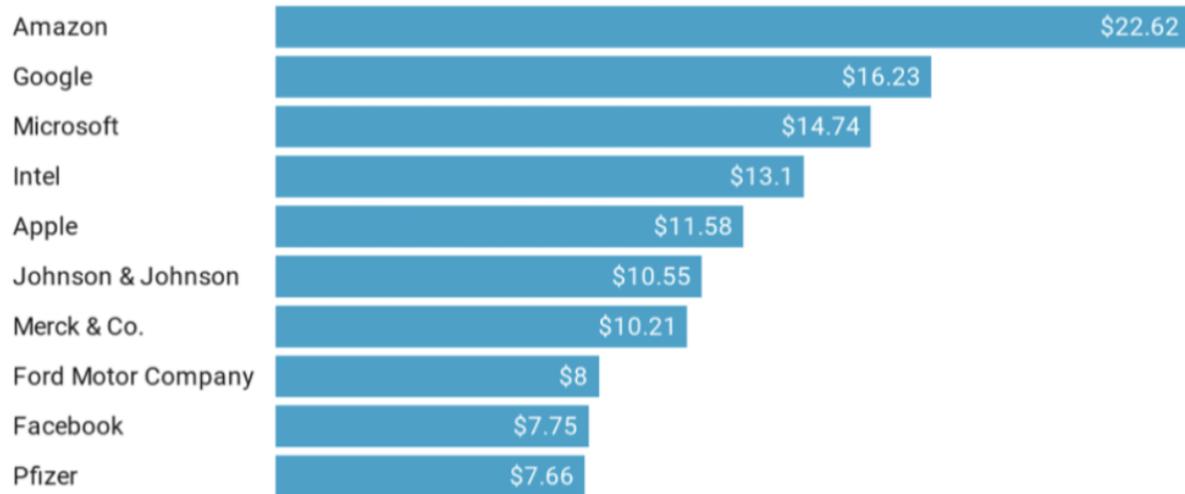


Chart: Alec Stapp (PPI) • Source: ideatovalue.com • Created with Datawrapper

TABLE 5: NON-ENERGY U.S. INVESTMENT HEROES: TOP 25 NONFINANCIAL COMPANIES BY ESTIMATED U.S. CAPITAL EXPENDITURE*

	COMPANY	ESTIMATED 2018 U.S. CAPITAL EXPENDITURES (MILLIONS USD)
1	ALPHABET	20,188
2	AT&T	19,209
3	AMAZON.COM	15,577
4	VERIZON COMMUNICATIONS	14,912
5	MICROSOFT	11,469
6	COMCAST	10,890
7	FACEBOOK	10,763
8	CHARTER COMMUNICATIONS	9,125
9	WALMART	7,683
10	INTEL	7,426
11	APPLE	7,129
12	FORD MOTOR	6,513
13	GENERAL MOTORS	5,756
14	FEDEX	5,255
15	DELTA AIR LINES	5,168

Bottom Line

Whether a business operates brick-and-mortar stores, digital marketplaces, or both, vertical integration benefits consumers. But digital platforms like Google Search and Apple's App Store benefit both consumers *and* their competitors. Today, consumers use digital app platforms and marketplaces with increasingly regularity—and those platforms support entrepreneurship like never before. Thanks to these platforms, small businesses can opt to own brick-and-mortar stores, sell online, or do both. This means local businesses can reach beyond their local communities. It also means consumers are not limited to their geographic region.

Digital platforms and marketplaces are also driving investment in the U.S. economy and its workers. The Progressive Policy Institute's U.S. Investment Heroes Report, for example, cites the top three industries for investment as technology-related.⁶¹ What's more: firms like Alphabet (Google), Amazon, Microsoft, and Facebook are among the top ten companies investing in the United States.⁶² Their investments totaled more than \$60 billion last year alone.⁶³

All these benefits—lower prices, higher-quality products and services, greater competition, more entrepreneurship—are made possible by the consumer-welfare model. Tweaking antitrust doctrine to cast self-preferencing as an anticompetitive practice will return the United States to its 1960s' understanding of antitrust. And it'll ensure these benefits are reduced.

⁶¹ Michael Mandel & Elliott Long, *Investment Heroes 2019: Boosting U.S. Growth* (Dec. 2019), https://www.progressivepolicy.org/wp-content/uploads/2019/12/PPI_InvestmentHeroes2019_V4.pdf.

⁶² *Id.* at P8.

⁶³ *Id.*

From: [Charlie Morrison](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Saturday, August 29, 2020 9:15:02 PM
Attachments: [iagdeempfibonaik.png](#)
[hfijmfnakbcablf.png](#)
[offmefjlcclabjk.png](#)
[mpmihbfkbbcoedco.png](#)
[nmgonhmfjedjlbq.png](#)
[Ohio Attorney General comments-search engine provider questions.pdf](#)

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RFC1 Purpose:

The purpose of this Request for Comment is to determine whether it is necessary and, if so, how the Attorney General should regulate general web searches that preference the provider's own products or services on a Search Engine Result Page ("SERP"). A proposed rule would aim to regulate internet search results that preference or display in a more prominent position products or services owned or operated by the search provider on SERPs.

By way of example, the question is whether it should be declared an unfair or deceptive act or practice for "Search Engine A" to give general preference in placement to a product(s) that Search Engine A owns or operates ("Owned Products or Services") and/or to feature its Owned Products outside of the normal algorithm(s) that populate results under normal searches.

For purposes of the Request for Comment, the aforementioned shall be referred to as the "Proposed Rule."

1. Is a Proposed Rule needed? Why or why not?

The Proposed Rule seems to be considering mandating that Search Engines allow competing advertisers to show ads in more preferential placements than ads placed by their own company. This would seem to allow other advertisers to gain preferential ad positions when competing against a Search Engine that is offering its own Products and Services.

A rule does not seem necessary, and may even work against the implied purpose of the Proposed Rule.

There is a monetary reason that this is likely to backfire. Search Engines currently place their advertisements in preferential positions, but exclude these ads from the "Bid Auction" that takes place between competing advertisers. This means that the Search Engine Owned Products or Services don't drive the prices up for other advertisers when they bid for ad placement against those Products and Services. Forcing Search Engines to compete for prominent ad positions would likely dramatically increase all the other advertisers' costs for all other positions on the SERP, not just the top spots. The Search Engines are currently avoiding taking actions that would drive up advertising costs for advertisers.

There also seems to be an ethical question to consider. Google and Bing are the two largest Search Engines, and both companies offer a variety of Products and Services, which they promote prominently on their websites. They currently offer other advertising spots to additional advertisers, who may be advertising against them. Can we really force them to allow a competitor to position a product over their own, on their own website?

If we do create rules that are too restrictive, there may be an array of other unintended consequences. The primary Search Engines offer a wide array of free software, including web browsers and operating systems. It's not a big leap for either to move the

ads for their own products into the browsers, operating systems, or other apps, if they are forced to demote their own ads, on their own websites.

It does not seem to be in the best interest of the search engines, or the consumer (the advertisers), for the state of Ohio to become involved in regulating this type of activity.

While I would advocate for other types of oversight, the Proposed Rule risks too many unintended consequences, and is unlikely to provide benefit to the consumers.

2. What is the appropriate definition of “search engine” and “search provider” for purposes of a Proposed Rule?
 - a. What terms are inappropriate to include in the definition of “search engine” that may otherwise normally be included?

A search engine should not be defined using the following inclusive terms:
Marketplace

- b. What terms are inappropriate to include in the definition of “search provider” that may otherwise normally be included?

Search Provider means the same thing as Search Engine in the common vernacular.

Is the Attorney General Seeking a term to differentiate between a website that uses its own Bots, Crawlers, or Spiders, from one that doesn't? I know that the questionnaire is asking for commenters to define different terms, but additional guidance seems necessary on this question.

3. How, if at all, is the structure of SERPs unfair or deceptive?
 - a. Specifically, how are the structures unfair or deceptive as related to integrating or prioritizing Owned Products or Services?

They are not unfair or deceptive. They aren't always what advertisers want, but that isn't the same thing as being unfair or deceptive.

- b. Specifically, how are the structures unfair or deceptive as related to displaying paid-for advertisement in positions or locations that confuse and/or prioritize those results over that of natural search results.

They are not unfair or deceptive. The ad copy always states “Paid Advertisement” (or a similar statement) in prominent locations related to the paid products, and frankly, those advertisements only work for the advertisers if they are relevant to the searchers. Additionally, any person who uses a search engine quickly learns how to spot the paid advertisement.

The Attorney General of Ohio advocates for consumers, and it's my understanding that the Proposed Rule is being considered to protect companies who advertise on a Search Engine. Suggesting that there is a question about "displaying paid-for advertisement in positions or locations that confuse and/or prioritize those results over that of natural search results," makes it confusing who the "consumer" is in this question. Up to this point, the consumer has been a paid advertiser on a Search Engine.

This question implies that the "consumer" may be the person using the Search Engine.

I'd offer that this question is not germane to the Proposed Rule as it is stated.

4. What, if any, identifiable or quantifiable consumer harm is caused by search engines giving preference to Owned Products or Services?

Assuming that the consumer is a competing advertiser, then the harm is identical to the harm that any other advertiser can offer. I would offer that it may cause a greater harm to remove a Search Engine's ability to promote their own product over others (note the details about the Bid Auction above).

- a. How can this Proposed Rule adequately address the harm?

A rule should not be made. If there is to be a rule, it should restrict the governmental oversight as much as it can, to provide very tight limits on government so it's harder for the rules to be misused, particularly in ways that violate first amendment rights.

- b. Are there market-based solutions that reduce or eliminate the need for potential regulation?

Yes, and we enjoy them currently. A search engine/provider can't capitalize by taking over all of its own advertising spots. Advertising expenses almost always exceed net margin on product sales. Net revenue on product sales is often under 10%, but advertising costs for a product often exceed 25% of gross margin. So, in many cases, the Search Engine can make more on advertising income than they do on a product sale. The Search Engine wants their product to show up first, but they don't want all the other ads to disappear. They make too much money on them.

- c. Is there a regulatory structure that could reduce or eliminate the harm without significantly hampering search result quality or interfering with innovation?

Not that I'm aware of.

- d. Would the benefit of a Proposed Rule outweigh the current harm to consumers?

Not in my opinion.

5. Should a Proposed Rule (or a similar rule) govern the population of Owned Products or Services by non-search engine websites, for example, by third-party selling sites?

If I understand this question correctly, I do not think that a rule should do so.

- a. If so, who should the rule govern?
- b. If so, for what reason(s)?
- c. If not, for what reason(s)?

If I understand the question correctly, we're discussing sites like Amazon, Target, Walmart, etc. These sites should promote their own goods above third party sellers. This is natural, and not something that we need to consider restricting.

6. Should a Proposed Rule (or a similar rule) govern the population of non-Owned Products or Services that are paid advertisements from which the search engine derives revenue?

No.

- a. If so, for what reason(s)?
- b. If not, for what reason(s)?

This is something that should be negotiated between the Search Engine and the advertiser. The placement of those paid advertisements is part of the benefit that the Search Engine offers to the advertiser, and part of the service the Search Engine is providing. A free market will shift revenue to a Search Engine that can offer better results, thus establishing value.

7. Should Owned Products or Services be subject to the same underlying algorithmic process as all other searches?

No. The Search Engine should use the prominent advertising spots it desires for its own Products and Services, and then use its underlying algorithmic process for the paid advertisers.

- a. Why or why not?

The Search Engines, the companies, should be able to decide whether to offer prominent advertising spots on their own websites. Why shouldn't they be able to control their own paid advertising?

- b. Is it ever appropriate to give algorithmic preferences or to evaluate outside of the normal process for an Owned Product or Service?

It is always appropriate for the Search Engine to give preference for its own Products and Services.

8. Should a Proposed Rule apply to preferencing a “comparison shopping service” owned or operated by a search engine in which the search engine produces results for a specific category of products, services or information grouped together in one result to allow for comparison shopping by aggregating data from different platforms?

No.

- a. Is it relevant if inclusion in comparison shopping services is based on paid inclusion in which a third-party must pay the search engine to be included?

No.

- b. Is it relevant if inclusion in comparison shopping services is based on the third-party paying the search engine if a user clicks through to its website via the comparison-shopping service result?

No.

- c. If the answer to either of the above is yes, what method of disclosing the relationship would remedy any consumer harm.
9. What evidence, if any, exist surrounding consumers’ cognition, perceptions, preferences, or the like regarding the population and placement of Owned Products or Services?

Again, who is the consumer in this situation? The questions seem to fluctuate. A real answer to this question requires that the consumer be defined.

10. Should all Owned Products or Services be treated in the same manner?

Yes.

- a. If not, which Owned Products or Services should be more strictly regulated?
- b. If not, which Owned Products or Services should be less strictly regulated
- c. What evidence, if any, exists for your reasoning? Does this evidence show consumer harm?
11. How, if at all, should a Proposed Rule guard against future changes in technology?

There shouldn’t be a rule that relates to this. The rule seems to be considering restricting what a publication is putting on its front page. The people that are using the websites are using them voluntarily, the advertisers are using the services voluntarily, and it’s very unclear why there should be a Proposed Rule in the first place.

- a. Can the rule be written in a way that it would be applicable and relevant to future technology changes?

Yes, it seems like there could be legislation drafted that might.

- b. Can the rule be written in a way that does not regulate internet search technology itself or harmfully interfere with innovation in the marketplace?

NO

12. Are additional disclosures necessary to inform consumers how search results are populated?

No.

- a. Is disclosure an appropriate alternative to a prohibition or to regulating the layout or structure of SERPs?

Yes.

- b. What should the parameters of effective disclosures look like?

They should look like they already do, which is how the free market has caused them to look.

- c. Are disclosures necessary in addition to a prohibition?

Neither should be dictated by law, so neither are necessary. The disclosures should be a result of the free market.

13. How is regulating SERPs similar to or different from regulating online advertising such as car advertisements?

The distinctions presented in this question seem unclear, because I don't know how advertising for things like car advertisements are currently regulated. Based upon what I know, I'd offer that there shouldn't be a difference.

14. Would a regulatory solution that requires the presence of a toggle switch that has the ability to turn off or hide results other than natural search results be feasible, workable and/or productive to achieve the intended purpose?

Again, who is the consumer in this Proposed Rule? This is a definite switch away from the initial statement about the purpose of the Proposed Rule.

Since the intended purpose is to "regulate internet search results that preference or display in a more prominent position products or services owned or operated by the search provider on SERPs," then the answer to the question about whether the presence of a toggle switch to turn off advertisements would affect that purpose would be NO.

WTF?

15. What benefits would a Proposed Rule have for consumers? What evidence do you have or know of that shows these benefits?

It would not have a benefit. I have no evidence that it would have a benefit.

16. What harms would a Proposed Rule have for consumers? What evidence do you have or know of that shows these harms?

Who is the consumer in this question?

17. What benefits would a Proposed Rule have for search engines? What evidence do you have or know of that shows these benefits?

None. How can adding rules that restrict a Search Engine help a Search Engine?

18. What harms would a Proposed Rule have for search engines? What evidence do you have or know of that shows these harms?

Asked and answered above.

19. What benefits would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these benefits?

Asked and answered above.

20. What harms would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these harms?

Asked and answered above.

I'd like to request to participate in any meeting to discuss responses to the Proposed Rule. My contact information is in the email where I sent this comment.

General Comments:

Thank you for the opportunity to comment on this proposed rule. I think this is a great topic, and am excited for the opportunity.

I'd like to start by stating that I'm disappointed that the AG didn't clearly define the "consumer" in this Proposed Rule. The stated purpose of the Proposed Rule conflicted with an array of questions in the Request for Comment. The AG can't advocate for all sides.

While I don't agree that there should be a rule to "regulate internet search results that preference or display in a more prominent position products or services owned or operated by the search provider," I do think that the AG might consider other ways to regulate Search Engines.

Comments for RFC1

One of the largest challenges that my company has been fighting is the inclusion of our products in search engines at all! COVID-19 hit us pretty fast, and the Search Engines blacklisted ads that included COVID related words, such as “mask,” even if the product had nothing to do with COVID recovery.

That might have been okay, if the Search Engines blocked all advertisers equally. Unfortunately, other advertisers are able to advertise the same products, without restriction. The blocking of these products is not consistent. My competition offers products that are being advertised on Search Engines, while my ads for the same products are blacklisted. Customer service reps have stated that they agree that our products shouldn't be blocked, but that they can't do anything to help.

I'm not asking for legislation to address this, but as a consumer, I wanted to share. I do not think the AG is considering what Ohio companies want, need, and deserve.

Sincerely,

Charles R Morrison III

<https://www.ohioattorneygeneral.gov/RFC1>

From: [Luther Lowe](#)
To: [RFC1](#)
Subject: Yelp response to Request for Comment
Date: Monday, August 24, 2020 4:19:41 PM
Attachments: [Ohio AG questionnaire Yelp responses.pdf](#)

To Whom it May Concern,

Please find attached Yelp's response to the following questionnaire:

<https://www.ohioattorneygeneral.gov/Business/Services-for-Business/Request-for-Comment>

In addition to the document, we encourage the Attorney General's staff to visit focusontheuser.com and view the videos and read over those materials.

Best,

Luther Lowe
Senior Vice President of Public Policy
Yelp
+1-202.460.8098 (mobile)

The Ohio Attorney General's Office is seeking comment regarding creating **a rule to regulate the placement of products or services owned or operated by an internet search provider.**

The purpose of this Request for Comment is to determine whether it is necessary and, if so, how the Attorney General should **regulate general web searches that preference the provider's own products or services on a Search Engine Result Page ("SERP").** A proposed rule would aim to **regulate internet search results that preference or display in a more prominent position products or services owned or operated by the search provider on SERPs.**

By way of example, the question is **whether it should be declared an unfair or deceptive act or practice for "Search Engine A" to give general preference in placement to a product(s) that Search Engine A owns or operates ("Owned Products or Services") and/or to feature its Owned Products outside of the normal algorithm(s) that populate results under normal searches.**

1. Is a Proposed Rule needed? Why or why not?

Yes.

While existing competition rules must be actively used to tackle illegal behavior by market players, the need for timely and effective intervention calls for a possible regulatory framework to complement antitrust rules vis-à-vis dominant digital platforms.

Instead of being gateways that facilitate access, large dominant platforms use their privileged position to increase their own market power. The result is resoundingly negative for competition and consumers alike. Consumers suffer through limited choice and higher prices. Innovation, competitiveness and pluralism of information deteriorate because it becomes harder for new businesses to enter and disrupt markets.

The market for online search is characterized by the dominance of a single search engine, Google. Google's market shares, the existence of barriers to expansion and entry, the infrequency of user multi-homing and Google's leveraging of its power from general search to specialized search services make online search an uncompetitive environment.

Google has been systematically positioning and displaying more favorably, in its general search results pages, its own specialized search service.

Yelp considers that conduct by which a vertically integrated search engine *gives an illegal advantage to its own specialized search service by systematically ensuring a prominent placement for it and demoting rival comparison specialized services in its search results* should be prohibited subject to objective justification.

Yelp supports the adoption of a Rule that prohibits **certain forms of self preferencing by a dominant search engine.**

Such regulatory intervention is justified in cases of a vertically integrated dominant search engine in the market for online search, which is characterized by particularly high barriers to entry, and where the search engine serves as an intermediation infrastructure of particular significance, to the extent that the platforms perform a regulatory function.

This is the case of Google, which has been leveraging its market power on general search to the market of local search. Google positions and displays, in its general search results pages, its own local search service more favorably compared to competing local search services.

When competing local search services (such as Yelp) appear on Google's general search results pages, they appear only in the generic search results section of the page (i.e., Google's "ten blue links"). The generic search results are text-based, and they generally include only a webpage's title, its URL, a short snippet of text, and occasionally a star rating.

When Google Local Search results appear on Google's search engine result page (SERP), on the other hand, Google hardwires those results at the top of the first page, i.e above all generic search results. Google places them in an attractive OneBox that includes a map, images, ratings for local businesses, and more. These richer graphical features make it much easier for Google's Local Search results to grab a user's attention and result in higher click-through rates. For example, Yelp user experience research has shown over 70% of clicks on smartphone devices enter Google's local product, suggesting the majority of consumers may not be aware of third party services from across the web.

Google does not permit any competing local search service's results to appear meaningfully in the Local OneBox. There is no technical impediment to Google enabling third party services to have meaningful exposure in the local OneBox. For example, a search for "boston clam chowder" is detected as a recipe search on Google. As such, a recipe OneBox is

generated. This box has a user interface quite similar to the local OneBox (images, star ratings, etc.). Unlike the local Onebox, however, the Recipe OneBox sends any click directly to third party websites such as recipes.com. As such, fewer than 15% of searchers for “boston clam chowder” find themselves on a Google secondary page. On the other hand, nearly 80% of searchers for “clam chowder boston” (a query Google detects as a local search) end up staying on Google. Why does Google treat these searches so differently? Recipe search volume is relatively rare compared to local search volume, which is estimated to be as high as 46%.

2. What is the appropriate definition of “search engine” and “search provider” for purposes of a Proposed Rule?

a. What terms are inappropriate to include in the definition of “search engine” that may otherwise normally be included?

b. What terms are inappropriate to include in the definition of “search provider” that may otherwise normally be included?

An online search engine should be defined as a software system that is designed to search the World Wide Web in a systematic way for particular information specified in a textual web search query. A search engine allows users to input queries in order to perform searches in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found.

Considering the quick pace of innovation, the definition of an online search engine should be technology-neutral. In particular, the definition should be understood to also encompass voice requests.

A provider of an online search engine should be defined as any natural or legal person which provides, or which offers to provide, online search engines to consumers.

3. How, if at all, is the structure of SERPs unfair or deceptive?

a. Specifically, how are the structures unfair or deceptive as related to integrating or prioritizing Owned Products or Services?

b. Specifically, how are the structures unfair or deceptive as related to displaying paid-for advertisement in positions or locations that confuse and/or prioritize those results over that of natural search results.

Fair SERPs serve as conduits to the most relevant information indexed across the web. The initial “turnstile” nature of Google enabled this unfettered access to the Internet, but the current layout of Google’s SERP, which advantages Google’s own results through built-in OneBoxes, facilitates a myopic search environment for users and starves the broader Web of valuable internet traffic.

Google has long recognized that the greatest threat to its dominant position in general search is not that a direct competitor will take search market share. Rather, the greatest threat to Google Search is disintermediation - i.e., users bypassing Google’s general search services, either by navigating to content directly or through specialized search services for specific categories of content.

By preventing users from discovering competing local search services - and by preventing those services from growing - Google prevents competitors from establishing a direct relationship with its users. In this way, Google fights disintermediation and protects its role as the dominant online intermediary between users and specialized search results.

Indeed, the threat of disintermediation of its general search service was one of the primary motivations behind Google’s decision to expand into specialized search services, as evidenced by the company’s own internal documents.¹

While Google initially designed the local OneBox to be compatible with vertical search rivals, Google later made the decision to exclude search rivals’ content from competitively important OneBoxes, such as the Local OneBox (and unlike the Recipe OneBox). This decision hurts the quality of Google’s own search engine by displaying vertical search results that are objectively lower quality to what they would be in a legitimately meritocratic system. While the advent of OneBoxes was justified as a consumer convenience feature, there are no defensible reasons for excluding competitors’ content from placement within them.

This form of self-preferencing not only harms rivals in local search, but misleads consumers. According to a study performed by the UK marketing agency Varn, nearly two-thirds of consumers² (60%) cannot discern between an organic search result and a paid one. Due to the increased usage of mobile devices over the last half decade, screen

¹ Memorandum, Recommendation to the FTC on Google Antitrust Litigation, (8 Aug. 2012), page 126 note 102. *“What is the real threat if we don’t execute on verticals? (a) loss of traffic from google.com because folks search elsewhere for some queries; (b) related revenue loss for high spend verticals like travel; (c) missing opty [sic] if someone else creates the platform to build verticals; (d) if one of our big competitors builds a constellation of verticals, we are hurt badly”.*

²<https://marketingtechnews.net/news/2018/sep/06/two-thirds-people-dont-know-difference-between-google-paid-and-organic-search-results/>

sizes are smaller and consumers have a limited range of visibility within a search. Thus, any prioritized placement of Owned Products and Services constitutes a strong advantage.

These benefits are borne out in Kim and Luca's research on consumer behavior. Kim and Luca's work shows that the OneBox captures anywhere from 42% to 45% of clicks when presented.³ Subsequent research of user behavior on smartphone SERPs shows Google's ability to siphon clicks to its own properties nearly doubles.

Due to the virtually indiscernible nature of ads and the unspoken prioritization of Google's content within prime SERP positions, users' searches are unfairly constrained and misrepresentative of what the broader web has to offer.

- 4. What, if any, identifiable or quantifiable consumer harm is caused by search engines giving preference to Owned Products or Services?**
 - a. How can this Proposed Rule adequately address the harm?**
 - b. Are there market-based solutions that reduce or eliminate the need for potential regulation?**
 - c. Is there a regulatory structure that could reduce or eliminate the harm without significantly hampering search result quality or interfering with innovation?**
 - d. Would the benefit of a Proposed Rule outweigh the current harm to consumers?**

Google harms competition and consumers by denying choice and reducing the quality of content within their search results: Google matches consumers with less and lower quality information than what would otherwise be available across the web. By forgoing the meritocratic processes and quality scoring intrinsic to the function of its general search algorithm, Google exploits the trust users have that information appearing higher on the SERP is the most relevant.

Review quality and relevancy are two strong, quantifiable metrics for demonstrating consumer harm from specific types self-preferencing conducted by dominant platforms to the detriment of competitors.

³ See e.g., Hyunjin Kim & Michael Luca, *Product Quality and Entering Through Tying: Experimental Evidence* (Harvard Bus. Sch. NOM Unit, Working Paper No. 19-045, 2018), <https://papers.ssrn.com/so13/papers.cfm>.

Yelp performed internal research of reviews available on Yelp and Google for the first 100 businesses listed by both companies for a set of 120 generic queries with “local intent” (*i.e.*, queries indicating that a user is searching for a local business). These queries each took the form of [city, business type] (e.g., “Cleveland Restaurants”). They were developed based on pairings from 20 different U.S. cities and six common business categories for local search.

First, Yelp analyzed the level of detail provided within individual reviews. To conduct this analysis, Yelp compared the relative length of reviews, measured by word count. Reviews with higher word counts are simply more statistically likely to contain information that may be useful to a user. “Empty”, wordless ratings of restaurants are not permitted per Yelp’s policy, but are permitted within Google Reviews. Comparing the relative lengths of reviews on each platform revealed that the average review length on Yelp is more than twice as long as Google’s across all analyzed business categories.

Yelp not only provides richer user generated content by our own standards, but by Google’s as well. Prior to 2016, all Google local content was indexed on *plus.google.com*. That meant Google’s Local content was subject to Google’s PageRank algorithm, and could appear within Google Search result pages in the form of a blue link. This indexing of Google’s content enabled researchers to conduct simple comparative analyses of whether Google was preferencing its own content. For example, the “Hair Stylist Akron” query could be modified as “Hair Stylist Akron (site:plus.google.com)” to demonstrate that Google’s local content, when run through its own organic algorithms, would not appear until page fifty of Google’s own search results. Evidence of this conduct is summarized in the recently published Kim and Luca study⁴. While degraded search relevancy may not result in grave harms when users are mismatched with a low-quality restaurant or hair stylist, the consequences can be more serious when users are paired with professionals in critical industries, such as poorly rated doctors or mechanics.

The proposed rule would allow for a more meritocratic, organic ranking of which reviews better serve users. Opening OneBoxes to the wider Web releases local search from its current, unwieldy constraints, and restores consumer choice.

5. Should a Proposed Rule (or a similar rule) govern the population of Owned Products or Services by non-search engine websites, for example, by third-party selling sites?

⁴ Hyunjin Kim & Michael Luca, *Product Quality and Entering Through Tying: Experimental Evidence* (Harvard Bus. Sch. NOM Unit, Working Paper No. 19-045, 2018), <https://papers.ssrn.com/so13/papers.cfm>.

- a. **If so, who should the rule govern?**
- b. **If so, for what reason(s)?**
- c. **If not, for what reason(s)?**

N/A.

- 6. **Should a Proposed Rule (or a similar rule) govern the population of non-Owned Products or Services that are paid advertisements from which the search engine derives revenue?**
 - a. **If so, for what reason(s)?**
 - b. **If not, for what reason(s)?**

Yelp supports the strengthening of transparency requirements regarding the clear labeling of sponsored ads as such and the differentiation from organic listings. Over the years, ad markings have become more subtle, making it difficult for users to clearly identify sponsored results. Therefore, regulators need to ensure that large search engines comply with clear design treatment for ads requirements.

- 7. **Should Owned Products or Services be subject to the same underlying algorithmic process as all other searches?**
 - a. **Why or why not?**
 - b. **Is it ever appropriate to give algorithmic preferences or to evaluate outside of the normal process for an Owned Product or Service?**

Yelp believes that search engines deliver the best customer experience when they generate non-discriminatory, meritocratic page rankings. This is especially true of local search, which relies heavily on dynamic, user-generated content (UGC) to continue developing relevance and accuracy.

However, there are general search scenarios in which a swift, single-step method of responding to a search may be more appropriate. A couple years ago, Google and other search engines began to incorporate “quick answers” to deliver factual information (i.e. calculations, the birthday of a historical figure) directly within the SERP. These results arguably save users time and allow for more convenient searches.

In the case of local search, the shift to direct answers via OneBoxes has proven to be less centered on user benefit than rival exclusion. Competitors may be able to thrive regardless

of the introduction of OneBoxes in the future *if they are given the opportunity* to compete fairly for a space within them. As of today, rivals have been denied that opportunity. According to a 2012 FTC staff report, select rival vertical search sites are given Google's "blessed site" designation, which triggers Google's OneBox placement on top of the page, thereby siphoning off their Internet traffic.⁵

Instituting a non-discrimination requirement for search engines would reduce the imbalance perpetuated by self-preferencing.

- 8. Should a Proposed Rule apply to preferencing a "comparison shopping service" owned or operated by a search engine in which the search engine produces results for a specific category of products, services or information grouped together in one result to allow for comparison shopping by aggregating data from different platforms?**
- a. Is it relevant if inclusion in comparison shopping services is based on paid inclusion in which a third-party must pay the search engine to be included?**
 - b. Is it relevant if inclusion in comparison shopping services is based on the third-party paying the search engine if a user clicks through to its website via the comparison-shopping service result?**
 - c. If the answer to either of the above is yes, what method of disclosing the relationship would remedy any consumer harm.**

Yelp considers that certain forms of self preferencing by dominant vertically integrated search engines should be presumed unfair trading practices. In its Google Search (Shopping) decision, the European Commission found that Google had abused its dominant position as a search engine operator by privileging its own comparison shopping service in the placement of the search results, thereby diverting traffic from competing offers to their own service and thus leveraging its market power in the market for general internet search to the market for comparison shopping services.⁶

The European Commission's decision on Google comparison shopping already established that *when a vertically integrated search engine gives an illegal advantage to its own comparison shopping service by systematically ensuring a prominent placement for it and*

⁵ FTC Staff Memo

⁶ European Commission, Decision of 27 June 2017, AT.39740 – Google Search (Shopping), esp. paras. 341 ff.

demoting rival comparison shopping services in its search results, this amounts to illegal conduct. According to the European Commission, by artificially diverting traffic from rival comparison-shopping services, Google’s self-favoring aims at leveraging its market power on general search to the market of comparison shopping sites.⁷

We therefore support the inclusion in the Proposed rule of a similar provision that would lay out the conditions under which self preferencing should be considered an illegal practice. The scope of such a provision should not be limited to comparison shopping but it should be extended to cover all types of vertical search services. Just as it did with its comparison shopping service, Google positions and displays, in its general search results pages, its own local search service more favorably compared to competing local search services.

9. What evidence, if any, exists surrounding consumers’ cognition, perceptions, preferences, or the like regarding the population and placement of Owned Products or Services?

As previously noted, Google’s OneBoxes enjoy a high click-through rate (CTR). However, the high CTR on Owned Products and Services does not necessarily indicate a preference for these results so much as defaults and status quo bias. Consumers may be unconscious of the presence of Owned Products or Services throughout a SERP page, but academic work demonstrates that they prefer a richer, rival-included search experience when it’s offered. Yelp has experimentally shown that consumers will unwittingly click on objectively lower quality search results on Google as they have been habituated to assume the “best” results are on top of the page.

Wu and Luca’s research further shows that users prefer search engine results pages that contain third-party content, whether measured by revealed or stated preference. Their analysis found that modifying Google’s results using the “Focus on the User” plugin—which mimics what results would look like without intentional exclusionary behavior, and incorporating content from Google’s own organic links—increased click-through rates from 49% to 66% (significant at the 5% level). A follow-up study was peer-reviewed and published in the *Management Science* journal, and further validates Wu and Luca’s original study.⁸

⁷ https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740

⁸ Hyunjin Kim & Michael Luca, *Product Quality and Entering Through Tying: Experimental Evidence* (Harvard Bus. Sch. NOM Unit, Working Paper No. 19-045, 2018), <https://papers.ssrn.com/so13/papers.cfm>.

10. Should all Owned Products or Services be treated in the same manner?

- a. If not, which Owned Products or Services should be more strictly regulated?
- b. If not, which Owned Products or Services should be less strictly regulated?
- c. What evidence, if any, exists for your reasoning? Does this evidence show consumer harm?

See above.

11. How, if at all, should a Proposed Rule guard against future changes in technology?

- a. Can the rule be written in a way that it would be applicable and relevant to future technology changes?
- b. Can the rule be written in a way that does not regulate internet search technology itself or harmfully interfere with innovation in the marketplace?

For the Rule to be future and technology proof, the rule needs to have a clearly defined scope; the practices to be prohibited need to be broad enough to catch all relevant conduct but sufficiently precisely defined to have the desired signaling effect and to enable simple monitoring and enforcement. Furthermore, there needs to be a regulatory mechanism to allow for the regular review of the rule and adapt it, if necessary. Lastly, considering the quick pace of innovation, the definition of online search engine should be technology-neutral. In particular, the definition should be understood to also encompass voice requests.

12. Are additional disclosures necessary to inform consumers how search results are populated?

- a. Is disclosure an appropriate alternative to a prohibition or to regulating the layout or structure of SERPs?
- b. What should the parameters of effective disclosures look like?
- c. Are disclosures necessary in addition to a prohibition?

Search engines must clearly and conspicuously label when it inserts its own content or services into, alongside, or around the organic, “natural” search results and should be prohibited from using enhanced display formats for their own services.

However, simply requiring a search engine to label its own vertical search services would not prevent the company from manipulating search results and discriminating against competing services. Although the labeling requirement is crucial in order to enable consumers to make informed choices, it cannot be the sole solution.

The harm being caused by a search engine’s preferential placement is not only about consumer deception; it is primarily about the power to divert substantial volumes of traffic and revenues away from competing services and to its own. Because of this, clear and conspicuous labeling alone will not be sufficient to solve the problem.

13. How is regulating SERPs similar to or different from regulating online advertising such as car advertisements?

N/A

14. Would a regulatory solution that requires the presence of a toggle switch that has the ability to turn off or hide results other than natural search results be feasible, workable and/or productive to achieve the intended purpose?

Yelp sees merits in the suggested technical solution. However, for this proposal to be effective, the default option should be the display of search results based on meritocracy. Fortunately, as the Recipe OneBox example shows, this does not mean users have to choose between enhanced search results with answer boxes and a reversion to 20-year old “ten blue links.” Google can power its answer boxes using an organic mechanism which rewards the content provider with a conspicuous link to the source.

On the contrary, maintaining the current status quo will allow dominant search engines to continue to display the results that serve their commercial interests to the detriment of competition and consumers alike.

Universal Search has been implemented by Google for exclusionary purposes to divert traffic from specialized search competitors in order to preserve its dominance in horizontal search and provide a much-needed traffic boost to Google’s own specialized search alternatives. Empirical studies have repeatedly shown that this implementation of

Universal Search degrades Google’s search product and harms consumers. In addition, it reduces the incentives of existing and potential vertical search providers to invest in the innovative and disruptive technologies of specialized search.

Reversing the default options for display of search results has the potential to enhance consumer choice and bring much needed oxygen in the online search market.

15. What benefits would a Proposed Rule have for consumers? What evidence do you have or know of that shows these benefits?

Search engines play an important role for consumers, helping them to navigate the Internet, and quickly and easily find useful information in response to a broad range of search queries.

With regards to local search, consumers prefer search results that incorporate third-party content. The most direct evidence that the exclusion of a dominant search engine’s rivals constitutes degradation is to ask consumers themselves whether they prefer a review ecosystem in which, on the one hand, they have ready access only to the dominant search engine’s proprietary content or, on the other hand, one in which they have equal access to content from third-party sources. Experiments that have been conducted along these lines have found that users decisively prefer the second option. This result has been consistent for both users’ stated and revealed preferences.⁹ In the most comprehensive experiments of both revealed and stated preference, consumers showed a strong and statistically significant preference for search results that included third-party content.

The academic work of Wu and Luca shows that users prefer search engine results pages that feature a OneBox whose content is based on third-party content, whether measured by revealed or stated preference. Their analysis found that modifying Google’s results using the “Focus on the User” plugin—which mimics what results would look like without intentional exclusionary behavior, and incorporating content from Google’s own organic links—increased click-through rates from 48% to 66% (significant at the 5% level).¹⁰ A

⁹ Stated-preferences reflect preferences that individuals say they have or choices they say they would make in a given context, and are usually elicited through surveys. Revealed-preferences relate to the actual choices made by individuals when placed in that context. Revealed preferences are elicited through experiments, in which participants need not be aware of what exact type of context they are facing, or is being tested. Showing that individuals prefer the OneBox when it features third-party content in terms of stated and revealed preferences means that individuals both claim that they prefer it, and behave in a manner consistent with this claim.

¹⁰ Michael Luca et al., Does Google Content Degrade Google Search? Experimental Evidence, at 25 (Harvard Bus. Sch. Working Paper, No. 16-035, 2015).

follow-up study was recently peer-reviewed and published in the Management Science journal, and further validates Wu and Luca's original study.¹¹

The proposed rule will enhance consumer choice by enabling the display of the most relevant results to consumers' queries. Consumers will also benefit indirectly from the flourishing competitive market reaping the benefits of innovation and the emergence of new players offering quality services.

16. What harms would a Proposed Rule have for consumers? What evidence do you have or know of that shows these harms?

N/A

17. What benefits would a Proposed Rule have for search engines? What evidence do you have or know of that shows these benefits?

The proposed Rule has the potential to restore competition in the online search market and allow search engines to compete on the merits of their services for user attention and user traffic. User traffic is critical to the ability of specialized search services to compete, and local search services are no exception.

Traffic is thus essential to local search providers not only because they monetize that traffic through advertising, but also because traffic is a key input to the virtuous cycle on which their services are built. The most important source of traffic for local search services are general search websites.

Google's control over general search traffic puts it into a position from which it can sabotage competing local search providers by starving them of the traffic necessary to keep growing.

Timely regulatory intervention is needed to ensure that dominant search engines are not allowed to stifle innovation by driving its competitors out of the market to the benefit of their own vertical search services.

¹¹ See, e.g., Hyunjin Kim & Michael Luca, Product Quality and Entering Through Tying: Experimental Evidence, 65 MGMT. SCIENCE at 596-603 (2019), <https://pubsonline.informs.org/doi/10.1287/mnsc.2018.3246>.

18. What harms would a Proposed Rule have for search engines? What evidence do you have or know of that shows these harms?

N/A

19. What benefits would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these benefits?

Small businesses rely on search engines to reach consumers. However, small businesses are currently deprived of the opportunity to make their products and services known to consumers. SERPs reflect Google's commercial interest rather than relevance to users' queries.

Absent any regulation and transparency around search results, consumers trust Google to give them a result that corresponds to market reality. What consumers will not know is that there might be other comparison sites offering other merchants, products and prices that could be better or more relevant for them than those displayed in Google's own service.

As a result, consumers are denied the possibility to find offers which might better reflect what they are looking for than those appearing on Google's websites. It's like walking down a shopping street but the pavement and streets are blocked beyond the Google-approved shops.

Establishing a non discrimination principle and introducing meritocracy in search results will enable merchants to reach consumers and make their products and services available to a larger base of users.

20. What harms would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these harms?

N/A

From: [Lyn Bliss](#)
To: [RFC1](#)
Subject: Comment re. rule to regulate the placement of products or services owned or operated by an internet search provider
Date: Tuesday, July 07, 2020 3:14:31 PM
Attachments: [The Ohio Attorney General.pdf](#)

Attached, please find my comments regarding regulation of internet search providers.

If you have questions, please contact me.

Thank you.



Lyn Bliss
Phone/Text: (937) 423-2299



The Ohio Attorney General's Office is seeking comment regarding creating a rule to regulate the placement of products or services owned or operated by an internet search provider.

General comments (per instructions "comments to any or all of the following questions"):

- An internet search provider is a business.
- There are many internet search providers (so many, that searches for that number just return items such as "top 10" , "best 20", etc.).
- When I go to Google, I am looking for Googles' response to my inquiry and would certainly expect to find Googles' response and not Yahoo's, Duckduckgo, Bing or any of the other search engine responses and or products.
- When I go to Kroger, I do not expect to see Hy-Vee products on display.
- When I go to Firestone for tires, I do not expect to see General Tires on display.
- Visiting Google is no different than my visit to a brick and mortar store or any online shopping or other on-line service – I would not expect to find products/services offered by other competing entities there. I would expect to find only those items offered by, or promoted by, the owner.
- I would not think it prudent, wise or just for the government to get into the business of requiring one business to feature products/services offered by other businesses.

Respectfully submitted,

Lynda W. Bliss
lbliss@woh.rr.com

All comments must be electronically submitted or postmarked by 11:59PM EST on August 30, 2020. Electronic submission in text-searchable PDF format to RFC1@ohioattorneygeneral.gov is highly encouraged and preferred. Hard mail can be sent to Ann Yackshaw, 30 E. Broad Street, Floor 16, Columbus, OH 43215.

Comment shall reflect the corresponding number to which they are responding to for reference. General comments that do not specifically correspond with one of the above questions will also be accepted.

Please note that your submission and all information contained therein is considered public record. All comments will be posted on the Ohio Attorney General's website on or before September 11, 2020 for a period of no less than 30 days.

Request for Comment

Summary:

The Ohio Attorney General's Office is seeking comment regarding creating a rule to regulate the placement of products or services owned or operated by an internet search provider.

Dates:

All comments must be received on or before 11:59pm EST on August 30, 2020.

Background:

The Consumer Sales Practices Act (R.C. 1345.01 *et seq.*) regulates consumer transactions between consumers and suppliers. R.C. 1345.05(A) grants power to the Attorney General to adopt, amend, and repeal rules.

Purpose:

The purpose of this Request for Comment is to determine whether it is necessary and, if so, how the Attorney General should regulate general web searches that preference the provider's own products or services on a Search Engine Result Page ("SERP"). A proposed rule would aim to regulate internet search results that preference or display in a more prominent position products or services owned or operated by the search provider on SERPs.

By way of example, the question is whether it should be declared an unfair or deceptive act or practice for "Search Engine A" to give general preference in placement to a product(s) that Search Engine A owns or operates ("Owned Products or Services") and/or to feature its Owned Products outside of the normal algorithm(s) that populate results under normal searches.

For purposes of the Request for Comment, the aforementioned shall be referred to as the "Proposed Rule."

Request for Comment:

Please provide any comments you may have. Please notate the number and subpart for which you are responding. Particularly helpful are comments to any or all of the following questions:

1. Is a Proposed Rule needed? Why or why not?
2. What is the appropriate definition of "search engine" and "search provider" for purposes of a Proposed Rule?
 - a. What terms are inappropriate to include in the definition of "search engine" that may otherwise normally be included?

- b. What terms are inappropriate to include in the definition of “search provider” that may otherwise normally be included?
3. How, if at all, is the structure of SERPs unfair or deceptive?
 - a. Specifically, how are the structures unfair or deceptive as related to integrating or prioritizing Owned Products or Services?
 - b. Specifically, how are the structures unfair or deceptive as related to displaying paid-for advertisement in positions or locations that confuse and/or prioritize those results over that of natural search results.
4. What, if any, identifiable or quantifiable consumer harm is caused by search engines giving preference to Owned Products or Services?
 - a. How can this Proposed Rule adequately address the harm?
 - b. Are there market-based solutions that reduce or eliminate the need for potential regulation?
 - c. Is there a regulatory structure that could reduce or eliminate the harm without significantly hampering search result quality or interfering with innovation?
 - d. Would the benefit of a Proposed Rule outweigh the current harm to consumers?
5. Should a Proposed Rule (or a similar rule) govern the population of Owned Products or Services by non-search engine websites, for example, by third-party selling sites?
 - a. If so, who should the rule govern?
 - b. If so, for what reason(s)?
 - c. If not, for what reason(s)?
6. Should a Proposed Rule (or a similar rule) govern the population of non-Owned Products or Services that are paid advertisements from which the search engine derives revenue?
 - a. If so, for what reason(s)?
 - b. If not, for what reason(s)?
7. Should Owned Products or Services be subject to the same underlying algorithmic process as all other searches?
 - a. Why or why not?
 - b. Is it ever appropriate to give algorithmic preferences or to evaluate outside of the normal process for an Owned Product or Service?
8. Should a Proposed Rule apply to preferencing a “comparison shopping service” owned or operated by a search engine in which the search engine produces results for a specific category of products, services or information grouped together in one result to allow for comparison shopping by aggregating data from different platforms?
 - a. Is it relevant if inclusion in comparison shopping services is based on paid inclusion in which a third-party must pay the search engine to be included?
 - b. Is it relevant if inclusion in comparison shopping services is based on the third-party paying the search engine if a user clicks through to its website via the comparison-shopping service result?

- c. If the answer to either of the above is yes, what method of disclosing the relationship would remedy any consumer harm.
9. What evidence, if any, exist surrounding consumers' cognition, perceptions, preferences, or the like regarding the population and placement of Owned Products or Services?
10. Should all Owned Products or Services be treated in the same manner?
 - a. If not, which Owned Products or Services should be more strictly regulated?
 - b. If not, which Owned Products or Services should be less strictly regulated?
 - c. What evidence, if any, exists for your reasoning? Does this evidence show consumer harm?
11. How, if at all, should a Proposed Rule guard against future changes in technology?
 - a. Can the rule be written in a way that it would be applicable and relevant to future technology changes?
 - b. Can the rule be written in a way that does not regulate internet search technology itself or harmfully interfere with innovation in the marketplace?
12. Are additional disclosures necessary to inform consumers how search results are populated?
 - a. Is disclosure an appropriate alternative to a prohibition or to regulating the layout or structure of SERPs?
 - b. What should the parameters of effective disclosures look like?
 - c. Are disclosures necessary in addition to a prohibition?
13. How is regulating SERPs similar to or different from regulating online advertising such as car advertisements?
14. Would a regulatory solution that requires the presence of a toggle switch that has the ability to turn off or hide results other than natural search results be feasible, workable and/or productive to achieve the intended purpose?
15. What benefits would a Proposed Rule have for consumers? What evidence do you have or know of that shows these benefits?
16. What harms would a Proposed Rule have for consumers? What evidence do you have or know of that shows these harms?
17. What benefits would a Proposed Rule have for search engines? What evidence do you have or know of that shows these benefits?
18. What harms would a Proposed Rule have for search engines? What evidence do you have or know of that shows these harms?
19. What benefits would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these benefits?
20. What harms would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these harms?

From: [Carolyn White](#)
To: [RFC1](#)
Subject: Survey is not opening up
Date: Sunday, June 28, 2020 7:14:49 PM

Sent from my iPhone

From: pammjones53@gmail.com
To: [RFC1](#)
Subject: Proposed Request for Comment number 3
Date: Monday, June 29, 2020 11:46:02 AM

Sent from [Mail](#) for Windows 10

From: [Shakira Hamilton](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Sunday, June 28, 2020 8:20:49 PM

Request for Comment:

Please provide any comments you may have. Please notate the number and subpart for which you are responding. Particularly helpful are comments to any or all of the following questions:

1. Is a Proposed Rule needed? Why or why not? No because there are more important policies that need to be addressed in Ohio.
2. What is the appropriate definition of “search engine” and “search provider” for purposes of a Proposed Rule? A digital platform used to locate specified topics or locations of interest.
 - a. What terms are inappropriate to include in the definition of “search engine” that may otherwise normally be included?
 - b. What terms are inappropriate to include in the definition of “search provider” that may otherwise normally be included?
3. How, if at all, is the structure of SERPs unfair or deceptive? It's not. If a private company is providing a search platform, then it is reasonably understood their own content would be prioritized.
 - a. Specifically, how are the structures unfair or deceptive as related to integrating or prioritizing Owned Products or Services?
 - b. Specifically, how are the structures unfair or deceptive as related to displaying paid-for advertisement in positions or locations that confuse and/or prioritize those results over that of natural search results. Educate consumers on marketing, advertising practices that are used to deceive.
4. What, if any, identifiable or quantifiable consumer harm is caused by search engines giving preference to Owned Products or Services? It could create a monopolized market but capitalism has already done that.
 - a. How can this Proposed Rule adequately address the harm? It'll cause search platforms to circumvent these new rules. Apparently free market is no longer happening.
 - b. Are there market-based solutions that reduce or eliminate the need for potential regulation? Yes, educate consumers on companies' practices.
 - c. Is there a regulatory structure that could reduce or eliminate the harm without significantly hampering search result quality or interfering with innovation? No.
 - d. Would the benefit of a Proposed Rule outweigh the current harm to consumers? No.
5. Should a Proposed Rule (or a similar rule) govern the population of Owned Products or Services by non-search engine websites, for example, by third-party selling sites? No.
 - a. If so, who should the rule govern?
 - b. If so, for what reason(s)?
 - c. If not, for what reason(s)?
6. Should a Proposed Rule (or a similar rule) govern the population of non-Owned Products or Services that are paid advertisements from which the search engine derives revenue? No.

7.
 - a. If so, for what reason(s)?
 - b. If not, for what reason(s)?
8. Should Owned Products or Services be subject to the same underlying algorithmic process as all other searches? Yes.
 - a. Why or why not? Keep this fair amongst the platforms.
 - b. Is it ever appropriate to give algorithmic preferences or to evaluate outside of the normal process for an Owned Product or Service? No.
9. Should a Proposed Rule apply to preferencing a “comparison shopping service” owned or operated by a search engine in which the search engine produces results for a specific category of products, services or information grouped together in one result to allow for comparison shopping by aggregating data from different platforms? No.
 - a. Is it relevant if inclusion in comparison shopping services is based on paid inclusion in which a third-party must pay the search engine to be included?
 - b. Is it relevant if inclusion in comparison shopping services is based on the third-party paying the search engine if a user clicks through to its website via the comparison-shopping service result?
 - c. If the answer to either of the above is yes, what method of disclosing the relationship would remedy any consumer harm.
10. What evidence, if any, exist surrounding consumers’ cognition, perceptions, preferences, or the like regarding the population and placement of Owned Products or Services? Trending items are a good indicator of perceptions or preferences.
11. Should all Owned Products or Services be treated in the same manner? Yes.
 - a. If not, which Owned Products or Services should be more strictly regulated?
 - b. If not, which Owned Products or Services should be less strictly regulated?
 - c. What evidence, if any, exists for your reasoning? Does this evidence show consumer harm?
12. How, if at all, should a Proposed Rule guard against future changes in technology? If legislation does happen and I believe it should not, revisit it on five year intervals.
 - a. Can the rule be written in a way that it would be applicable and relevant to future technology changes? Not really. Technology and interpretation are too nuanced.
 - b. Can the rule be written in a way that does not regulate internet search technology itself or harmfully interfere with innovation in the marketplace? No.
13. Are additional disclosures necessary to inform consumers how search results are populated? Yes. Educate consumers.
 - a. Is disclosure an appropriate alternative to a prohibition or to regulating the layout or structure of SERPs? Yes.
 - b. What should the parameters of effective disclosures look like? Full transparency.
 - c. Are disclosures necessary in addition to a prohibition? Not in addition to prohibition.
14. How is regulating SERPs similar to or different from regulating online advertising such as car advertisements? Search engines are not consumable products.
15. Would a regulatory solution that requires the presence of a toggle switch that has the ability to turn off or hide results other than natural search results be feasible, workable and/or productive to achieve the intended purpose? That would be an acceptable compromise.
16. What benefits would a Proposed Rule have for consumers? What evidence do you

have or know of that shows these benefits? None really. There's no serious demand for this proposed rule.

17. What harms would a Proposed Rule have for consumers? What evidence do you have or know of that shows these harms? Loss of free choices.
18. What benefits would a Proposed Rule have for search engines? What evidence do you have or know of that shows these benefits? None.
19. What harms would a Proposed Rule have for search engines? What evidence do you have or know of that shows these harms? Reduction or deterrent of future services.
20. What benefits would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these benefits? Fair point. It would give them fair competition over corporations. The evidence would be search engine owners, hiding competition. Thereby causing profit loss for small businesses, as evident in the financial need for additional funds with SBA.
21. What harms would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these harms? None. Having equitable access to competition doesn't need evidence to prove.

S.H.

From: [Crystal Bellman](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Sunday, June 28, 2020 6:51:21 PM

1 - 20 ————— For Real...That's what you're worried about???..Come on Doesn't State Officials have So Many other things to Worry about???....How about like How OHIO & Most All government Officials..All get COVID Testing-many, many times..Above All the People...Isn't that a Better Question??.....Oh & there's a Plethora of More Questions & or issues that need attention to...Long before the Google thing!!!....And FYI— isn't it Google's web search..so, they probably get to do as they Please....You know Kinda like Elected Officials..Kinda Do as they Please & Expect We the People to Just Suck it Up & Be Ok with it....SMH.

From: [Michael A Sura](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Sunday, June 28, 2020 5:42:22 AM

Is a Proposed Rule needed? NO. Once the government gets involved it will be screwed up by the politicians. We pay way too much in Taxes. Keep your corrupt hands off the internet.
Make America Great! Trump 2020!

From: [r mike Vrable](#)
To: [RFC1](#)
Subject: surve request
Date: Saturday, June 27, 2020 8:50:19 AM

I think its pretty simple.
vote to provide privacy to the citizens.
There should be no cause for advertisers to be able to "see" user choices while on the internet.
If I want to buy an "XYZ" or learn more about it, autonomous stores should NOT be able to see what my interest is!
Legislate for the constituency.
We are all losing privacy every day. I hope you will vote to help slow it down.
Mike Vrable

--
mike vrable

From: Wcash2@columbus.rr.com
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Saturday, June 27, 2020 12:03:02 AM

What drives me up a wall as a consumer, and what would infuriate me as a seller, is that sites ignore specificities in a search term that SHOULD bring up other products before theirs' appear to the shopper. When I enter terms for a search, I expect the closest matches to appear first. They don't, I waste a lot of time sifting thru junk, and sometimes I either give up altogether or make a purchase without taking time to look at all the most relevant options. This practice is more than just being comparable to placing select brands at eye level in a retail store. It's more like putting one brand IN FRONT of another on the SAME shelf.

Sent from my iPad

From: [Valarie Corwin](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Friday, June 26, 2020 3:50:59 PM

To Whom It May Concern:

RE: Search Engine results in my experience are concerning and are for the past decade, problematic and confounding... increasingly. It seems one sided to conservative and opinion networks like FOX news and strange conspiracy type odd outlets, rather than the news I prefer. It happens consistently, and I can expect it daily several times as I dump the cookies regularly to avoid being catered to, and find it disconcerting it always resets to the conservative or faux news options which are to my way of thinking programming the person with brain washing having exposure to the nonsense, that passes in conservative preferential media these days as, journalism/news.

I am concerned with coding in black box voting machines and RF frequency or software, or programming that is designed to disenfranchise the voter in Ohio as in other states like Florida, Georgia and Texas among many others Alabama and the list continues, fail the people and their vote to be reflected in the reality. All this comes down to the hacking that is problematic and is purposefully it appears, according to the Mueller Report allowed to persist, in the scope of this topic you are asking for the comments about today, concerning search engine results.

It doesn't seem to matter the search engine, Duck Duck Go, or Google or Yahoo, AOL, all seem to be infected with the echo chamber of preference to results of the conservative GOP and the Trump administration heavy preference to the point it is a struggle to finally find any other viewpoint from my experience, yet I persist.

The search from my computer generates differently depending if I have cleaned or not the cookies from my recent viewing history.

If I clear the history, and it is blank for the spiders to trip the canned response of the search for whichever the criteria in the queries includes, I will result with only a typical right wing agenda answers finding less of any other option of perspective in the result.

Progressively as I have cookies, the results begin reluctantly and only after wording carefully the search and hitting on a few items that are "warmer" to what I am trying to get answers to, it becomes steered to the answers I am seeking rather than a canned response of right wing agenda on mainly google format, even the google powered formats that promise more anonymity like Start Page Product.

But it seems this is more in line with the heavy hand in my estimation personally of the hacking by the Russian and the other hackers that work with the permission of the GOP/Trump Administration by neglect to adjust the internet to prevent any of this stretching what used to be a Facebook or social media issue to the big common accessed search engines people use the name of to describe the action of a search engine... namely Google.

It sometimes seems the results are there to foil the search altogether, to get it to steer and pop results of unproven and unscientific fake news, that is politically slanted... which is attempt at brain washing.

I don't have any faith in the privacy or the FEC having control or perhaps ability to intervene in the current political climate but the evidence is so bold and regular it is not any question in my experience that this is engineered rather than random.

I am from Ohio, 45244 zip code, area, this is my personal email, and am a registered voter - last time I checked; I suspect that will need to be verified before the presidential election cut off time, due to the political climate and shenanigans of voter suppression happening currently with the climate of our politics and elections ongoing.

I hope this effort is forthright and is intention-ed and enacted with fairness. I don't feel in the past these are anything more than fishing expositions phishing from a government level, however from the perspective of the people in the power at the time. I hope this will equalize and become more democratic in the future.

I wish to request of anyone with bad intention to please cease and desist any wrongdoing or aiding and abiding to these issues, by design or neglect which both result in the same. Please take this position in Ohio, as a resident seriously that, I have commented on herein. Please start functioning for all the people not just your constituency equally, as although I am a constituent... I feel my perspective is ignored, I do not feel included in the process, and I feel I am set upon with pressure when I speak my position and preference and raise my concerns, ultimately, silenced and stifled by the selectivity of political preference to the what is called but sure is wildly different from the past, conservative government.

I am responding as I have experienced this often in my search and have foregone use of Google as much as I can, to avoid the experience. I am not a scientist. I am not with "evidence" and do not have the focus or know how to be that for your purpose. I just have my frustration from having been subjected to this topic from a personal home computing perspective and have often been aware, that there is more to it than meets the eye for the consistency of the results, my activism is perhaps not a strong witness for your purpose. I do however have an ongoing frustration from the preferential results that are generated when my cookies are clear and I go into YouTube for example and get mostly Trump supportive rhetoric aligned and opinion network news of FOX news opinion station, over MSNBC, CNN, or any other news outlet like AP, Brookings Institution, or any of the public stations or NPR, which are always absent until I select or query for specific outlet or search and start my own preference becoming aligned and taylor ed as I go along, which I always dump the cookies and find the same ongoing unequal preference with each new start each day, so I am quite aware it is engineered on some level, and I am being constantly bombarded with this type of unfair activity and exposure unnecessarily.

I am simply letting you know a common untrained in computer science, but no less a user of the internet has this ongoing every day it is evident, it is persistent and it is as far as my experience, predictable.

I haven't the attention span to answer to try to act as though I can answer these questions in any other way than as I have offered you above, and I know it is my opinion, but I feel you should want to know the common person perspective even if not savvy to your usual expectations of co workers or agency people, I am just a citizen and claim no real skill... but I have deep concern of this being the case for the future of democracy and the impact in the elections of 2020 and come the future of our United States of America hangs in the balance of this manipulation.

Please provide any comments you may have. Please notate the number and subpart for which you are responding. Particularly helpful are comments to any or all of the following questions:

1. Is a Proposed Rule needed? Why or why not?
2. What is the appropriate definition of “search engine” and “search provider” for purposes of a Proposed Rule?
 - a. What terms are inappropriate to include in the definition of “search engine” that may otherwise normally be included?
 - b. What terms are inappropriate to include in the definition of “search provider” that may otherwise normally be included?
3. How, if at all, is the structure of SERPs unfair or deceptive?
 - a. Specifically, how are the structures unfair or deceptive as related to integrating or prioritizing Owned Products or Services?
 - b. Specifically, how are the structures unfair or deceptive as related to displaying paid-for advertisement in positions or locations that confuse and/or prioritize those results over that of natural search results.
4. What, if any, identifiable or quantifiable consumer harm is caused by search engines giving preference to Owned Products or Services?
 - a. How can this Proposed Rule adequately address the harm?
 - b. Are there market-based solutions that reduce or eliminate the need for potential regulation?
 - c. Is there a regulatory structure that could reduce or eliminate the harm without significantly hampering search result quality or interfering with innovation?
 - d. Would the benefit of a Proposed Rule outweigh the current harm to consumers?
5. Should a Proposed Rule (or a similar rule) govern the population of Owned Products or Services by non-search engine websites, for example, by third-party selling sites?
 - a. If so, who should the rule govern?
 - b. If so, for what reason(s)?
 - c. If not, for what reason(s)?
6. Should a Proposed Rule (or a similar rule) govern the population of non-Owned Products or Services that are paid advertisements from which the search engine derives revenue?
 - a. If so, for what reason(s)?
 - b. If not, for what reason(s)?
7. Should Owned Products or Services be subject to the same underlying algorithmic process as all other searches?
 - a. Why or why not?
 - b. Is it ever appropriate to give algorithmic preferences or to evaluate outside of the normal process for an Owned Product or Service?
8. Should a Proposed Rule apply to preferencing a “comparison shopping service” owned or operated by a search engine in which the search engine produces results for a specific

- category of products, services or information grouped together in one result to allow for comparison shopping by aggregating data from different platforms?
- a. Is it relevant if inclusion in comparison shopping services is based on paid inclusion in which a third-party must pay the search engine to be included?
 - b. Is it relevant if inclusion in comparison shopping services is based on the third-party paying the search engine if a user clicks through to its website via the comparison-shopping service result?
 - c. If the answer to either of the above is yes, what method of disclosing the relationship would remedy any consumer harm.
9. What evidence, if any, exist surrounding consumers' cognition, perceptions, preferences, or the like regarding the population and placement of Owned Products or Services?
 10. Should all Owned Products or Services be treated in the same manner?
 - a. If not, which Owned Products or Services should be more strictly regulated?
 - b. If not, which Owned Products or Services should be less strictly regulated?
 - c. What evidence, if any, exists for your reasoning? Does this evidence show consumer harm?
 11. How, if at all, should a Proposed Rule guard against future changes in technology?
 - a. Can the rule be written in a way that it would be applicable and relevant to future technology changes?
 - b. Can the rule be written in a way that does not regulate internet search technology itself or harmfully interfere with innovation in the marketplace?
 12. Are additional disclosures necessary to inform consumers how search results are populated?
 - a. Is disclosure an appropriate alternative to a prohibition or to regulating the layout or structure of SERPs?
 - b. What should the parameters of effective disclosures look like?
 - c. Are disclosures necessary in addition to a prohibition?
 13. How is regulating SERPs similar to or different from regulating online advertising such as car advertisements?
 14. Would a regulatory solution that requires the presence of a toggle switch that has the ability to turn off or hide results other than natural search results be feasible, workable and/or productive to achieve the intended purpose?
 15. What benefits would a Proposed Rule have for consumers? What evidence do you have or know of that shows these benefits?
 16. What harms would a Proposed Rule have for consumers? What evidence do you have or know of that shows these harms?
 17. What benefits would a Proposed Rule have for search engines? What evidence do you have or know of that shows these benefits?
 18. What harms would a Proposed Rule have for search engines? What evidence do you have or know of that shows these harms?
 19. What benefits would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these benefits?
 20. What harms would a Proposed Rule have for small businesses? What evidence do you have or know of that shows these harms?

From: [Thomas J .Kessen](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Friday, June 26, 2020 3:08:03 PM

I think the states need to recognize google was a monopoly due to the fact if you don't buy their phones or don't by there of their apps that their products will Not work with other peoples phones or won't work correctly with other people phones their search engines are you either use their search engine's on their products or things don't work just something to think about sincerely yours THOMAS Joseph KESSEN

Sent from my iPhone

From: [Thomas J .Kessen](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Friday, June 26, 2020 2:41:38 PM

The trouble I have with Google and other outfits is they on their maps they own some hardware and then they on the search read Jen and when you try to find something then and you go into Google search it always brings you back to their hardware and their maps and their Mapstone have everything that's what throws me I bought a home thermostat two weeks after I bought the home thermostat google bought the company now I have two apps on my phone to operate one thermostat sincerely yours THOMAS Joseph Kessen

Sent from my iPhone

From: [Elizabeth Van Valkenburgh](#)
To: [RFC1](#)
Subject: proposed rule on search engine
Date: Friday, June 26, 2020 12:10:47 PM
Attachments: [Attorney General Request for Comment on Search Engines.pdf](#)

Elizabeth Van Valkenburgh

1. The proposed change is needed, extremely. When results are presented the user has every reason and expectation that those results have meaning to his question or search. Now that we can fully see the efforts by the big tech to slant or even disguise reports, change is required to get back to a level playing field.
2. The definition must include language that makes it clear that the results will be generally what the user is looking for and not being steered by the engine itself to further its agenda. I don't know what the definitions are right now so can't speak to specific language or wording but the results must be non-biased. For instance, if I look up 'Donald Trump' search engine must assume I have no particular stance (and they cannot show theirs). Same must be true of 'Barack Obama' and 'anti-vax'. Users want information and not the 'party line'.
3. Results are unfair and deceptive both currently in using the big name search engines. Users are presumably looking for information and not 'what am I supposed to think' results.

I have no 'beef' with google ads showing first, but they should be clearly marked as such and easy to get to what I'm really looking for beyond the ads. It is even more disturbing to me that google tracks everything. This is 'big brother' at its worst. I, myself, don't use google search engine and use one that does not track my searches for this reason, however, many website searches are just google searches embedded without this disclosure.

Perhaps, at the same time, we need to be rooting out the forced inclusion of search engine with Microsoft Windows product. It's nearly impossible for the average user to 'get rid of' the bing search engine, which is just as bad as the google one. Because I choose to use Windows (how else are you going to run your life and business) should not make me a 'marked woman' for their tracking.

I have never used a search engine to find companies who've paid to get my attention instead of being fed actual search results.

4. There is always harm in being deceptive but the true problem is that most users don't know they're being deceived and aren't aware of other search engine options. Few understand how fully all our actions are being tracked by persons unknown to us and with no desire to protect us and our reputations.

Yes, the benefit of a Proposed Rule by far outweighs the current harm. Even the word 'google' has become a synonym for 'internet search'. I personally never use the word and always say 'internet search' instead.

5. Yes, a Proposed Rule should govern the population of other sites because the third-party sites are using google to search and have not written their own search engine. People should know this so they can choose not to be so-tracked. I search for a whiz bang this morning and by afternoon google is aware that I'm in search. I didn't ask for this, nor did I consent to this nor was I even asked for consent. The entire process is deceptive. And 'cookies' should not be exempt from this either. I do not allow third-party cookies but (since we don't see them) we don't know that our rules are being complied with. They pretend that this tracking is for better customer service at their site but they have no priority of customer service over additional sales.

6. Don't know what you're asking here that hasn't already been asked and answered.

7. Absolutely. It's never appropriate to give algorithmic preferences outside of the normal process.

8. I have used Nextag.com occasionally to comparison shop or just to find out where I can get something I'm looking for. I don't have any idea who owns it and runs it. Should I click on something there that brings Nextag some revenue, I don't particularly care one way or the other. I do think these kinds of services should be upfront about who is and isn't included. A page that states what the relationship is before providing results is the way to make all of this clear.

9. I don't know.

10. All owned products or services should be treated in the same way as far as I can determine.

11. Not at all certain that any Proposed Rule can guard against future changes in technology.

12. Yes, disclosures are necessary, with expensive repercussions if they are found to be deceptive in any way.

13. Don't see regulations as being different in anyway from online advertisements.

14. Don't see that a toggle switch would do anything but ask for more deception.

15. The benefit is that the consumer is now fully informed. We have a huge problem now in this country as the left cannot discuss with the right any topic because they've only seen what they've been led to and vice-versa. Neither side knows what they're not seeing and is being hidden from them. It takes a conscious effort to see the entire picture and most people are not aware of this. Facebook, for instance, leads you to what they think will please you and not what you should know to make an informed decision.
16. I see no harm to the consumer at all.
17. I see no benefits to the search engines (as I believe they are fully conscious already how they're leading people to deliberate falsehoods. If you found a search engine whose mission it is to show integrity, then that is the benefit.
18. The 'harm' to the search engines is that they would have to be neutral, which they apparently have to intention to be.
19. Small businesses would now have an even playing field, which is all we want.
20. I see no harm to small businesses.

From: [k thompson](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Friday, June 26, 2020 10:49:51 AM

Lot of work try link each number using my phone. Google show ad there paid to advertise that total rip off. Report it same ad there next day. Started using gmail put all my trust saved password bookmarks . phone broke could not verify i was who i say that my gmail xeliterguestx@gmail.com . all my Veterans dod sites links social security. Ect. Gone. Google mass spammer.

From: [Dennis Holland](#)
To: [RFC1](#)
Subject: Proposed Request for Comment Free enterprise on line
Date: Friday, June 26, 2020 9:42:08 AM

When government restricts free enterprise the people loose. I have the freedom to make a choice. I do not want the government(socialism) to decide for me. The market will seek it's own level.

There are abuses of freedom that are not to be accepted. With out God in our government there is no freedom, just riots and bad behavior.

Sincerely

Dennis Holland, Madison. OH 44057

From: [susan wright& donnie schaffer](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Friday, June 26, 2020 9:40:37 AM

thanks for the request I love church Google that is all I need I hope this helps
Susan Wright

From: [BL BLAZY](#)
To: [RFC1](#)
Subject: Proposed Request for Comment
Date: Friday, June 26, 2020 9:37:53 AM

Online results are not misleading
any more than other media.

Online results by smarter searching
consumers can be very general or specific.

Searches are done as well as the person performing them.

Barbara Blazy
Willoughby Hills Ohio