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## CAPITOL ANALYSTS NETWORK, INC.

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### GOOGLE: GROWING UP IS HARD TO DO

Happy birthday, Google! On September 15, 1997, two Stanford PhDs registered a domain name, [Google.com](http://Google.com). With Java and Python programming, the math geniuses wrote algorithms that compiled and ranked searches on the burgeoning World Wide Web. Typical of a toddler, this new company built its first storage unit out of [Legos](#). After its IPO seven years later, it started to grow like Topsy. By 2011, this teenager was [the largest media owner](#) in the world. Today, [over 80% of web browsing](#) is done through Google.com, and gmail.com handles nearly [one-quarter of email traffic](#).

The aggressive teenage Google sometimes bullies. In June 2009, Amazon signed a license agreement with Google to provide it with a limited data feed of information about its products. It tried to limit Google's use of the data, so Google decided to "crawl" Amazon's website to scrape more detailed product information, including star ratings and reviews. Amazon asked Google to stop using data it had scraped from its website, to which Google's response was to crawl Amazon's product web pages in order to "read embedded information" and understand its classification system, which it then used to create its own. Similarly, in 2010, Yelp asked Google to remove content it had copied onto its Google Local site. Google then threatened to remove Yelp's information from all Google properties.

Google also got involved in politics in 2008 when it created a specialized unit that helped power Barack Obama's final election drive to the presidency. That unit reunited in 2012 and may have made the difference in defeating Mitt Romney. [The alliance continued](#). Spun out of Google, the successor group did the data analytics for Hillary Clinton in 2016. Google's leader Eric Schmidt was so bold as to brag that he was in Clinton's war room on election night, an honor reserved only for a very few important and loved aides. He proudly had his picture taken with a big "staff" button that night.

Republicans, for obvious reasons, view Google as a very powerful partisan opponent that has tried and often succeeded in doing great damage to their cause, three national elections in a row. Political risks facing the company are rising rapidly. Times have changed: in 2017, Google faces potential threats from the Federal Trade Commission, the Justice Department, and the Federal Communications Commission. Trump's new appointees chair these organizations, and they have the power to hurt the company unilaterally should they choose to use it. Part of this is animus toward an ideological opponent but the other part is based on important public policy concerns.

Like many of us, the adult Google may fondly yearn for those carefree teenage years. As a shareholder, expect changes.

## **Trump, Antitrust, and Implications for Google**

Late in his presidential campaign [Trump said](#), “As an example of the power structure I’m fighting, AT&T is buying Time Warner and thus CNN, a deal we will not approve in my administration because it’s too much concentration of power in the hands of too few.” A tougher stance on media mergers has implications for Google, and the reopening of an antitrust investigation.

It is not just Trump calling for greater anti-trust scrutiny. Senator Orrin Hatch (R-UT), the former Chairman of the Senate Judiciary Committee, specifically wants a new anti-trust investigation of Google. Interestingly, so does Richard Blumenthal (D-CT), a former state Attorney General known for his challenges to big businesses. Blumenthal (D-CT) wanted the FTC to [reopen the antitrust case](#) against Google in April 2016, in tandem with the European antitrust investigations.

## **From Russia with Disinformation ... And Google's Help**

Google also faces a public relations backlash due to carelessness. It helped Russia interfere in our national elections. On November 9, 2017, Google told the Senate Judiciary committee that it determined 18 channels on its YouTube property were [probably linked to Kremlin agents](#). More than 1,100 videos on racial, religious and political topics were posted from 2015 through the middle of 2017, and they were viewed 309,000 times between 2015 and late 2016. Some of them also were subsequently reposted to other social media websites.

YouTube was ranked the [leading multimedia website](#) in the United States in November 2016, based on a 78.8% market share of visits. It currently boasts [1.5 billion monthly active users](#), who spend an average of more than 1 hour a day watching it on mobile devices. Many Google or YouTube users were unaware that RT International was formerly called “Russia Today.” It reaches [2.24 million viewers](#) through YouTube, just shy of CNN’s [2.42 million subscribers](#). In its January 6, 2017 report, *Background to “Assessing Russian Activities and Intentions in Recent US Elections”*: *The Analytic Process and Cyber Incident Attribution*, the Office of the Director of National Intelligence declared RT International to be the ["Kremlin's principal international outlet."](#) Senator Mark Warner (D-VA), vice chairman of the Senate Intelligence Committee, [has characterized YouTube](#) as “a target-rich environment for any disinformation campaign — Russian or otherwise — that represents a long-term, next-generation challenge.”

In October, YouTube finally removed RT International from its preferred lineup, limiting its access to prime advertisers. This is a good thing, if coming late.

## **Starting With the First Executive Branch Potential threat, the Federal Trade Commission**

Trump’s new FTC appointees will have a running start examining Google’s anticompetitive practices on the basis of prior investigations the Commission concluded in 2013. A 2012 document written by staff at the Federal Trade Commission’s [Bureau of Competition](#) and leaked to the Wall Street Journal, revealed that it had cooperated and exchanged information with the European Commission regarding Google’s anti-competitive practices. FTC staff

interviewed the company's horizontal search competitors Microsoft (**MSFT**) and Yahoo! (**YHOO**), finding, for example, that Google's dominance in search meant that Microsoft's user volume was too low for it to conduct the "experiments" necessary to gather information about users that would enable the company to effectively market advertising alongside its search engine. Microsoft also alleged, and the FTC concurred, that Google used anticompetitive contractual restrictions on the automated cross-management of advertising campaigns, unlike other horizontal search websites.

FTC staff also met, interviewed, and subpoenaed vertical websites offering shopping, travel, local, and financial services. These included Amazon (**AMZN**), eBay (**EBAY**), NexTag, Foundem, Expedia (**EXPE**), TripAdvisor (**TRIP**), and Yelp (**YELP**), who complained that Google's practice of positioning its own vertical results ahead of their websites negatively impacted their ability to compete for users and advertisers. Not only did Google favor its own, often inferior results over others, but it engaged in a systematic policy of "scraping" data and ratings from competitor shopping sites in order to build up and improve Google Shopping.

The staff made several specific recommendations to FTC commissioners, including the following:

- That contractual restrictions Google employed on automated cross-management of advertising campaigns should be condemned under Section 2 of the Fair Trade Act<sup>1</sup> because they limit the ability of advertisers to make use of their own data
- That Google's anticompetitive, exclusionary agreements with websites for syndicated search should also be condemned under Section 2, "because they foreclose some portion of the market
- That Google's "scraping" or appropriation of the content of competitor vertical websites to enhance its own vertical products, to "maintain, preserve, or enhance its monopoly power in the markets for search and search advertising" violates Section 2 and Section 5.

Investors should recall that there is also a *separate, open investigation by the FTC about Google's anticompetitive practices as regards its Android system, based on allegations by applications developers and Microsoft*. The complainants believe that Google's practices will enhance the use of its search engine on smart phones where Android's operating system has an [88%](#) global market share.

The most dangerous scenario for securities holders is that the Justice Department sues to force Google to disgorge its search algorithms and databases on individual internet users. Imagine if there were six "Googles," each initially with the same technology and detailed information on individual customers. Something similar was done when "Ma Bell" was broken up in 1982, when long-distance AT&T and the "Baby Bells" emerged as rival siblings. Predictably, prices charged to search advertisers would fall with the creation of "Baby Googles,"

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<sup>1</sup> [Section 2 and Section 5](#) relate to "unfair methods of competition," and "unfair or deceptive acts or practices" affecting commerce," and FTC enforcement against these.

since any of the six could reach the same well-defined audience of interest to an advertiser. Internet users would likely benefit, too, as competition for the best search engine would explode.

There are less drastic possibilities as well. Some remedies would limit content provided over the internet that Google could purchase, including music and video libraries, for example. Google investors have to worry about both the FTC and the Justice Department. Then, there is the FCC.

### **Investors Also Must Watch the FCC Which is Poised to Hurt Google**

Despite a twenty-year bipartisan tradition of treating internet broadband providers as operators of an "information service," in 2015 the FCC acceded to the wishes of the Obama Administration and declared they were instead offering a "telecommunications service." To Google's and others' detriment, however, this decision will be reversed. On April 24, 2017, the FCC under its new chairman, Ajit Pai, [issued a proposed rule overturning the Obama era decision](#). Pai claims that the regulatory change reduced broadband infrastructure investment in the U.S., and via a "multiplier effect," has cost the nation 75,000 to 100,000 jobs.

This innocuous-sounding argument also masks a fierce struggle known as "net neutrality" between Google and other dominant internet powerhouses, and broadband provider powerhouses, especially Comcast (**CMCSA**), Verizon (**VZ**), and AT&T (**T**). If broadband is a telecommunications service, then the FCC can regulate it on price and in numerous other ways, presumably to the benefit of companies that rely on them, such as Google.

Google formally seems to agree. In its annual report, Google writes, "Our business depends on continued and unimpeded access to the Internet by us and our users. Internet access providers may be able to restrict, block, degrade or charge for access to certain of our products and services, which could lead to additional expenses and the loss of users and advertisers." And thus, the winners could become the losers.

### **Intensifying Legislative Threats From Congress**

Fake news and disinformation wouldn't matter as much if it weren't for the fact that so many consume it, and believe they are reading facts. According to a [September Pew Research](#) survey, 78% of the public under 50 gets news from social media, and 45% and 18% of Americans now get their news from Facebook and YouTube, respectively. An [October Pew Research](#) study found, "Roughly one-in-five social media users have changed their minds about a political issue or about a candidate for office, because of something they saw on social media." Politicians will take notice of this finding.

Lawmakers' interest in Google is not new or recent. In March 2011, Blumenthal along with Mike Lee (R-UT), asked the Senate Judiciary Committee [to hold a hearing](#) concerning Google's practices, including putting its search results over others, privacy, and its acquisitions of several vertical search website companies.

Legislative threats are intensifying since the GOP controls both the House and the Senate. Google opposes [The BROWSER Act](#) recently introduced by Commerce Committee SubChair

Blackburn, expanding privacy disclosures and requiring consumer opt-in for data-sharing and selling of user browser activity. The conservative *Daily Caller* cheers that "Google, Facebook are super upset that they won't be able to [sell your internet data without permission](#)". If the Act passes and enough people opt out, the value of Google would tank.

**Revising the Digital Millennium Copyright Act:** The Act protects Google against lawsuits when people using their search engine [see or download copyrighted material](#) without compensation going to the authors. Such searches generate numerous "views" that Google uses to profile future customers of advertisers, making their ads increasingly attractive to advertisers, and also to display current ads that they receive revenue for. Copyright holders must contact Google to have offending material removed every time, otherwise Google stays snug in a "safe harbor."

**Amending Section 230 of the Communications Decency Act of 1996:** Section 230 provides protection to a "provider or user" of an "interactive computer service" where "speech" is disseminated, even if such "speech" is libelous or even criminal. The protection is in force if the provider or user does not initiate such material or edit it. This is why Google cannot be sued at this time for providing Russian election propaganda which targeted American voters.

**Passing SESTA:** The Senate Commerce Committee unanimously approved The Stop Enabling Sex Traffickers Act (SESTA) on November 8, 2017. SESTA addressed advertising on the Backpage website, responsible for many of the 100,000 underage boys and girls [sold for sex](#). Google will have to restrict information searchers are using to commit crimes against children, with its help, or face the consequences.

**Passing the Honest Ads Act:** On October 19, in response to Russian intrusions on Google (GOOG), Facebook (FB) and Twitter (TWTR), Amy Klobuchar (D-MN), Mark Warner (D-VA), and John McCain (R-AZ) introduced the "[Honest Ads Act](#)" which would require them to maintain a public file of political ads sold on their sites above a cumulative total of \$500 per advertiser, as well as include a copy of the ad, a record of its performance, and its intended target audience. The companies also would be required to make "reasonable efforts" to prevent foreign actors from placing political ads.

### **Don't Underestimate the Power of State Attorney Generals**

The threats are not just federal. On November 13, 2017, Missouri's Republican attorney general, Josh Hawley, announced that he had issued a [subpoena to investigate Google](#) for potential violations of the state's consumer-protection and antitrust laws. Hawley is campaigning for Senator Claire McCaskill's (D-MO) seat in 2018. Is Josh Hawley a one-off? Time will tell, but in 2015, when Google tried to quash Mississippi's attorney general's subpoena, [forty attorneys general](#), Republicans and Democrats, joined in.

Investors could consider another precedent. Microsoft spent 21 years [fighting antitrust battles](#), and finally lost. Ruled an illegal monopolist in 2000, it submitted to a consent decree in 2002, and was almost broken up. In 1998, twenty state attorneys general and the District of Columbia had [joined forces in the antitrust case against Microsoft](#) (MSFT). Their complaints are similar to what has been alleged about Google for several years. Subsequently, Microsoft's

stock price languished for 17 years, regaining its 1999 peak only late last year. It might happen to Google, too.

## **Conclusion**

Social media companies, including Google, are skating on thin ice. Lawmakers on both sides of the aisle are increasingly unsympathetic to the idea that they are “just” platforms, and thus not liable for content, or required to account for the masses of data they skim from users. [Consumers don’t expect social media companies to behave responsibly](#). When trust falls this low, calls for “transparency” and “full disclosure” rise. What happens if social media companies face the same scrutiny as pharmaceutical firms? Future consumer searches might be engaged with a warning like this: “... your web search may result in a satisfactory purchase of a product at a good price. Furthermore, some users might experience identity theft, or find themselves plagued by web banner ads and unsolicited emails attempting to sell unwanted products. In rare cases, foreign governments may buy your web data to profile you and attempt to influence your political decisions.”

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