Submission for: U.S. FTC Fall 2018 Hearings on "Competition & Consumer Protection in the 21st Century"
Part 1 of 4 submissions for Topic #1: *"The state of antitrust and consumer protection law and enforcement and their development since the Pitofsky hearings."* FTC Project # P181201

A White Paper for the FTC Hearings, Part 1 of 4 on Topic 1

The Stunted State of U.S. Antitrust Enforcement of Internet Platforms

America's three enduring Internet platform monopolies and four market cartelizations are a result of lax, asymmetric antitrust law enforcement and America's anticompetitive Internet industrial policy

By Scott Cleland
President of Precursor LLC & Chairman of NetCompetition

August 17, 2018

(Previous version published under title "*America's Antitrust Enforcement Credibility Crisis*" December 13, 2017)

DISCLOSURES: *The views here are the author's, no one asked for or reviewed this prior to submission to the FTC. Scott Cleland served as Deputy U.S. Coordinator for International Communications & Information Policy in the George H. W. Bush Administration. He is President of Precursor LLC, an internetization consultancy for Fortune 500 companies, some of which are Google competitors, and Chairman of NetCompetition, a pro-competition e-forum supported by broadband interests. Cleland has testified before the Senate and House antitrust subcommittees on Google. Eight different Congressional subcommittees have sought Cleland's expert testimony and when he worked as an investment analyst, Institutional Investor twice ranked him the #1 independent analyst in his field.*

ABSTRACT: This white paper shows how the state of U.S. antitrust enforcement has changed since the Pitofsky hearings and what those changes have wrought concerning Internet platforms.

First this white paper spotlights: the failure of America's antitrust enforcement to "protect the process of competition," from three enduring and extending, Internet platform monopolies and four active Internet platform-driven market cartelizations; and the causes of this systemic failure, i.e. lax and asymmetric antitrust enforcement driven by an anticompetitive U.S. Government Internet industrial policy and law.

The U.S. Government is the problem here. America's Internet industrial policy experiment and law in the bipartisan 1996 Telecom Act[1] and in the bipartisan 1997 U.S. Framework for Global Electronic Commerce,[2] has proven twenty years later to be an inherently pro-monopolization policy in heavily-favoring the economic and competitive interests of Internet intermediary platforms and technologists over non-Internet competition or consumer interests. This bipartisan Internet policy failure calls for bipartisan solutions.

This paper summarizes the evidence of America's three standard monopolizing/monopsonizing distribution networks -- Google Standard Data, Facebook Standard Social, and Amazon Standard Commerce -- and how U.S. lax and asymmetric antitrust enforcement facilitated their respective dominances and consumer harms. Then this paper summarizes four ignored, derivative cartelization dynamics taking control of America's information economy today: i.e. Internet platform cartelization bottlenecking the economy; digital advertising cartelization; search ecosystem cartelization; and cartelization of U.S. Internet startup financing.

Second, this white paper spotlights how U.S. Internet industrial policy standards have conflicted with, undermined, and arbitraged U.S. antitrust enforcement, and the otherwise sound Chicago School antitrust

[1] https://www.fcc.gov/general/telecommunications-act-1996
[2] http://www.w3.org/TR/NOTE-framework-970706

consumer welfare standard, for online intermediary platforms. These competition-distorting, Internet industrial policy standards are: 1) *Competition Double Standard*, where the 1996 Telecom Act now regulates the same technologies oppositely, despite the full Internet convergence of communications and information technologies since 1996; 2) *Wild West Standard*, that makes it U.S. policy that Internet companies be unfettered by Federal or State regulations that apply to every other business; and 3) *Tech Welfare Standard*, that uniquely protects "interactive computer services" with immunity from responsibility for negligence or consumer endangerment. No surprise that standards designed to heavily-advantage Internet companies, succeed and spawn serial monopolizations and cartelizations. Inputs drive outputs.

INTRODUCTION:

Consumers, companies, and countries' antitrust authorities can see what U.S. antitrust case law practitioners apparently have not -- the forest for the trees -- the reality that U.S. antitrust law enforcement faces an apparent credibility crisis,[3] [4] [5] [6] [7] [8] [9] [10] because evidently it is not working in the Internet Age or fulfilling its central purpose of "protecting the process of competition" from cartelizations or monopolizations.

While U.S. antitrust "arborists" focus on the case "tree" and campfire in their line of sight, they appear to be missing the big picture of the intense anticompetitive smoke and heat emanating from the "forest" conflagration that is currently in "the process" of engulfing over half of the U.S. economy.

THE GOVERNMENT IS THE PROBLEM

U.S. antitrust law, precedent, and/or law enforcement have proven wholly inadequate in protecting the process of competition in the Internet Age.[11]

The normal process of competition has transmogrified into serial processes of monopolization and cartelization (catalogued below), because **the process of competition now *must go through* wholly-intermediated, hyper-centralized, unregulated, non-transparent, unaccountable, online intermediary platforms** that are heavily-incented to cartelize and monopolize their **bottleneck power** -- as simultaneous *monopsony* gatekeepers for online consumer demand and *monopoly* toll-keepers for offline supply.

---

[3] http://kenauletta.com/ Googled: The End of the World as We Know It; Ken Auleta, 2009
[4] http://searchanddestroybook.com/ Search & Destroy: Why You Can't Trust Google Inc.; Scott Cleland 2011
[5] https://www.goodreads.com/book/show/17660462-the-everything-store The Everything Store; Jeff Bezos and the Age of Amazon, Brad Stone, 2013
[6] https://stratechery.com/; https://stratechery.com/about/ Ben Thompson, Stratechery, 2014-2017
[7] http://www.jontaplin.com/the-book Move Fast and Break Things, How Facebook, Google and Amazon Cornered Culture and Broke Democracy; Jonathan Taplin, 2017
[8] Amazon's Stranglehold: How the Company's Tightening Grip is Stifling Competition, Eroding Jobs, and Threatening Communities, ILSR, Olivia LaVecchia & Stacy Mitchell, 2016
[9] https://www.yalelawjournal.org/note/amazons-antitrust-paradox; Amazon's Antitrust Paradox; Lina Kahn, 2017
[10] http://www.thefourbook.com/ The Four: The Hidden DNA of Amazon, Apple, Facebook, and Google; Scott Galloway, 2017
[11] http://precursorblog.com/?q=content/google-amazon-facebook-are-standard-monopoly-distribution-networks

Apparently, Congress' creation of the Antitrust Modernization Commission in 2002[12] and its final report in 2007[13] -- that recommended "*no changes to the substantive statutory provisions of Sections 1 and 2 of the Sherman Act, Sections 3 and 7 of the Clayton Act, and Section 5 of the FTC Act*" -- failed to appreciate or foresee the current out-of-control monopsonizations/monopolizations that were germinating in 2007 and that then metastasized into cartelizations in the decade since the Commission gave core U.S. antitrust law a premature and apparently mistaken clean bill of health for the 21st century.

Since 2013, U.S. antitrust enforcement has been AWOL on online intermediary platforms[14] -- Google, Amazon and Facebook, i.e. "the intermedia" -- despite copious evidence of the severe antitrust risks and anti-competitive market outcomes that result from the intermedia's economic bottleneck power.[15]

Even more troubling, **U.S. cartel enforcement, a linchpin of any effective antitrust enforcement effort, has apparently been asleep at the switch, allowing three standard distribution network demand-monopsonies/supply-monopolies to divide the market, allocate customers, and in plain sight**.

OVERVIEW OF THE EVIDENCE OF SERIAL MONOPSONIZATIONS/MONOPOLIZATIONS and CARTELIZATIONS

America hasn't faced a serial monopsonization/monopolization crisis like this since the 1880s. About half of the American economy is now in the latter stages of cartelization and monopsonization/monopolization.

Three Standard Distribution Network Monopsonizations/Monopolizations

1. ***Google Standard Data:***

   Over 90% of Americans[16] increasingly depend on Google for the services of accessing, using, and monetizing the world's information, global dominance Google gained via acquisition of >200 companies/potential competitors;[17] and tying Google search to the Android operating system and 19 Google apps.[18]

   Apparently, the DOJ/FTC are not currently probing Google, despite foreign monopoly abuse convictions[19] of Google and the suspicious closure of the FTC Android probe without a vote[20] that

[12] http://govinfo.library.unt.edu/amc/about_commission.htm
[13] https://www.wsgr.com/publications/pdfsearch/clientalert_modernization.pdf
[14] http://googlemonitor.com/wp-content/uploads/2017/10/Telling-Timeline-of-Google-Guardians-Government-Influence.pdf
[15] http://googlemonitor.com/wp-content/uploads/2017/10/Winner-Take-All-Financial-Results-of-"Google-Laxter-Antitrust".pdf
[16] https://www.statista.com/statistics/511358/market-share-mobile-search-usa/
[17] https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Alphabet
[18] http://www.benedelman.org/news/021314-1.html
[19] http://europa.eu/rapid/press-release_IP-17-1784_en.htm
[20] http://precursorblog.com/?q=content/does-us-antitrust-law-apply-google

allowed Google to maintain and extend its PC search advertising monopoly into a monopoly ecosystem of mobile search, operating system, Google Play,[21] Maps, and voice search.

Google acquired its monopoly by arbitraging the Clayton Act, and successfully lessening competition in hindsight, not purely by merit and innovation.

In acquiring YouTube in 2006, Google bought the second largest generator of searches in the world at that time, taking its share of searches from ~45% to 60%, tipping Google to be the dominant source of searches.[22] In acquiring DoubleClick in 2007, Google acquired the only company in existence that had more users, advertisers and publishers than Google, combining the #1 and #2 online advertising companies, and acquiring 1500 of the top 2000 advertisers and 17 of the top 20 publisher websites with which Google did not have a business relationship.[23] In 2010, Google also acquired AdMob, the #1 mobile digital advertiser at the time with 50% share of mobile digital advertising, extending its PC search advertising monopoly into its current monopoly in mobile search advertising as well.[24]

Google's also enjoys enduring monopoly power.[25] Consider the barriers to effective competitive entry facing the next potential search competitor -- since Google has already anticompetitively vanquished the last best hope for core search competition to Google -- Microsoft Bing[26].

The potential ante for competitive search entry starts with Google having invested >$325b over 19 years to aggregate the world's information and to generate >$500b in revenues.[27] Google's financial advantages are unmatched in that Google commands: >$800b in market value, $124b in annual revenue, 24% revenue growth, $100b in cash, ~$42b in free cash flow, and 89,000 employees.[28] Any potential competitor also faces insurmountable time-to-market disadvantages, i.e. Google's ~10-19 year lead in aggregating the world's different corpuses of information and data;[29] its lead of acquiring >200 most relevant search-enhancing companies;[30] and building the world's fastest, highest capacity network of 15 data centers[31] with server points of presence in most countries in the world.[32] Real search competition is not "a click away."

Google officials have provided much insight into Google's own understanding of its vast monopoly power.

> In 2009, Google CEO Eric Schmidt explained: "*Scale is the key. We just have so much scale in terms of the data we can bring to bear*;"[33] And later further concluded: "*Our model is just*

[21] http://europa.eu/rapid/press-release_IP-16-1492_en.htm
[22] http://googleopoly.net/wp-content/uploads/pdf/googelopoly_vi_presentation.pdf
[23] http://googleopoly.net/wp-content/uploads/pdf/cleland_testimony_092707.pdf
[24] http://googleopoly.net/wp-content/uploads/pdf/Why_The_FTC_Should_Block_Google.pdf
[25] Http://googleopoly.net/wp-content/uploads/2016/09/Googles-Information-Is-Power.pdf
[26] http://precursorblog.com/?q=content/why-did-google-facebook-stop-competing-with-each-other
[27] Https://abc.xyz/investor/
[28] https://finance.yahoo.com/quote/GOOG/key-statistics?p=GOOG
[29] http://googleopoly.net/wp-content/uploads/2016/09/Googles-Information-Is-Power.pdf
[30] https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Alphabet
[31] https://en.wikipedia.org/wiki/Google_Data_Centers
[32] http://conferences.sigcomm.org/imc/2013/papers/imc253-calderA.pdf
[33] Bloomberg-BusinessWeek, October 2, 2009

better… Based on that, we should have 100% share."[34] Google's Chief Scientist Peter Norvig reinforced the key of data scale: "*We don't have better algorithms than everyone else; we just have more data.*" [35]

In 2011, Google SVP Jonathan Rosenberg explained Google's monopoly power dynamically: *"Google is really based on this. Users go where the information is so people bring more information to us. Advertisers go where the users are, so we get more advertisers. We get more users because we have more advertisers because we can buy distribution on sites that understand that our search engine monetizes better. So more users more information, more information more users, more advertisers more users, it's a beautiful thing, lather, rinse, repeat, that's what I do for a living. So that's … the engine that can't be stopped."*[36] [Note an informed executive at Facebook or Amazon could say the same basic story for their respective demand-monopsony/supply-monopoly models, i.e. multiple, mutually-reinforcing, network effects that combine into a perpetual "flywheels," to use Amazon's term for its "Standard" monopoly powers.]

In 2013, Google Chairman Eric Schmidt further elaborated: "*The impact of the data revolution will be to strip citizens of much of their control over their personal information.... the communication technologies we use today are invasive by design, collecting our photos, comments and friends into giant databases that are searchable and, in the absence of regulation*...[it is all] *fair game.*"[37]

2. *Facebook Standard Social:*

Most Americans[38] increasingly depend on Facebook for most of the services of communicating, sharing and monetizing private personal and group social and political info, and news, to one's social network, monopoly power Facebook has gained by apparently collusively eliminating its biggest competitor, Google+, in 2014,[39] and substantially lessening competition via acquisition[40] of its top

[34] https://www.forbes.com/forbes/2009/1228/technology-google-apps-gmail-bing.html#4c34563b6f75
[35] https://ecpmblog.wordpress.com/2010/03/21/we-dont-have-better-algorithms-than-anyone-else-we-just-have-more-data/
[36] https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-continues-to-press-google-on-market-power-and-competition-policy-
[37] https://www.csmonitor.com/Commentary/Global-Viewpoint/2013/0508/Google-s-Eric-Schmidt-Internet-will-let-Chinese-rise-up
[38] https://www.statista.com/statistics/408971/number-of-us-facebook-users/
[39] http://precursorblog.com/?q=content/why-did-google-facebook-stop-competing-with-each-other
[40] https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Facebook

potential competitors, Instagram[41] and WhatsApp,[42] and crushing the revenue growth of their only competitors, Snap and Twitter, that Facebook couldn't buy.[43]

Facebook, and its three social subsidiaries: Messenger, Instagram and WhatsApp, are the four largest and fastest growing social networks.[44] Collectively, Facebook commands: 2.2 billion monthly and 1.4 billion daily active users; 65 million Facebook business pages; 6 million advertisers; and 10 million websites daily using Facebook Like and Share buttons in 70 different language communities.[45] Facebook users have created 2.5 trillion posts and users search those Facebook posts 2 billion times a day.[46] Every day, users spend 35 minutes on Facebook and check in an average of 8 times. Facebook's distribution network has 10 data centers and owns parts of transatlantic and pacific undersea cables.[47]

Facebook's successful acquisition of WhatsApp appears to be what tipped Facebook to the unmatchable global social monopoly social network it is today.

In February 2014, Facebook paid $19b to buy WhatsApp, a cross-platform mobile messaging app with ~450m users.[48] The Information's reporting of the purchase explained that Google CEO Larry Page offered WhatsApp more than the Facebook $19b offer and said that WhatsApp was a "*big threat to Facebook."*[49] WhatsApp founders reportedly turned down Google's higher offer because they thought Google only wanted to keep WhatsApp out of Facebook's hands and because Google did not offer WhatsApp a board seat like Facebook did.[50]

Why WhatsApp was the acquisition that tipped Facebook to become the uncatchable global Standard Social distribution network is that WhatsApp was strongest in most of the international markets, languages, and cultures that Facebook-Messenger was weakest in.[51] Apparently, combining Facebook and WhatsApp user bases, near perfectly filled in the respective gaps each other had geographic regions, languages and countries.[52] [53] Via acquisition, Facebook tipped its monopoly network effects to a point no one else could match.

---

[41] https://www.ftc.gov/news-events/press-releases/2012/08/ftc-closes-its-investigation-facebooks-proposed-acquisition
[42] https://www.ftc.gov/news-events/press-releases/2014/04/ftc-notifies-facebook-whatsapp-privacy-obligations-light-proposed
[43] http://precursorblog.com/?q=content/google-facebook-ad-cartel%E2%80%99s-collusion-crushing-competition-comprehensively
[44] https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/
[45] www.facebook.com
[46] https://zephoria.com/top-15-valuable-facebook-statistics/
[47] www.facebook.com
[48] http://money.cnn.com/2014/02/19/technology/social/facebook-whatsapp/index.html
[49] https://www.theinformation.com/Google-Was-Willing-to-Beat-Facebook-s-19-Billion-Offer-for-WhatsApp?token=5a97b96f48d5f0688d2dd2557d10f11f
[50] https://www.theinformation.com/Google-Was-Willing-to-Beat-Facebook-s-19-Billion-Offer-for-WhatsApp?token=5a97b96f48d5f0688d2dd2557d10f11f
[51] https://www.statista.com/statistics/258749/most-popular-global-mobile-messenger-apps/
[52] https://www.statista.com/statistics/289492/whatsapp-popularity-in-emerging-markets/
[53] https://www.statista.com/statistics/291540/mobile-internet-user-whatsapp/

Facebook's demand-monopsony/supply-monopoly is also enduring in the same way that AT&T's monopoly was enduring for several decades, because of network effects, where everyone wants to be on the communications and sharing network where they can reach everyone else with what they want to communicate and share. Facebook's Founder and CEO Mark Zuckerberg's original vision was Facebook as a "social utility"[54] and continued to consider it a "utility" for years[55] until he understood the antitrust connotation of being the ubiquitous "utility" for some service of value.

3. ***Amazon Standard Commerce:***

Amazon is America's #1: direct online retailer and Amazon Marketplace is America's #1 end-to-end commerce platform services/fulfillment/delivery provider for most of its competitors.

Amazon's Standard Commerce distribution network demand-monopsony/supply-monopoly, is a unique, integrated, end-to-end, commerce platform services model, and is already an enduring monopsony/monopoly, because of multiple mutually-reinforcing and unbeatable network effects, or perpetual "flywheels"[56] as Amazon calls them.

First, Amazon has become 'the everything store," in reality and in perception, by effectively supplying over 90% of America's potential available online commercial inventory -- almost a half billion commercial products and services.[57] Second, Amazon can uniquely aggregate most all potential inventory, because most all of its competitors (over five million[58]) apparently concede that they must sell on and through Amazon Marketplace, if they are to fully reach online consumer demand.

Third, apparently it is not lost on all Amazon's competitors, that Amazon has not only contractually locked up over 90% of U.S. of U.S. commercial supply in inventory and suppliers, but that Amazon has also contractually locked in over 90% of U.S. household buying power for distributable/deliverable products and services, now that Amazon has the top ~80m of America's 125m households as members of Amazon Prime,[59] and because Amazon Prime's membership is known to naturally, heavily skew toward high earners.[60]

Fourth, Amazon apparently enjoys the network effect for commerce that is analogous to what Facebook has achieved for social, and what AT&T achieved almost a century ago, in that we know from surveys of Amazon Prime users and other users, that "less than 1 percent of Prime members visit competing sites while shopping on Amazon, and Prime members spend almost three times as much with the company as non-Prime customers do."[61] [62]

---

[54] http://www.zdnet.com/article/facebook-the-social-web-utility-company/
[55] http://techland.time.com/2013/11/17/of-course-facebook-is-a-utility/
[56] https://ctsmithiii.wordpress.com/2012/02/15/3-arms-of-bezos-flywheel/
[57] https://export-x.com/2015/12/11/how-many-products-does-amazon-sell-2015/
[58] https://www.entrepreneur.com/article/303532
[59] https://www.geekwire.com/2017/prime-hits-90m-u-s-households-representing-63-amazon-customers-study-claims/
[60] https://www.geekwire.com/2017/prime-hits-90m-u-s-households-representing-63-amazon-customers-study-claims/
[61] https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf
[62] https://sg.finance.yahoo.com/news/why-stats-amazon-google-very-191704941.html

Amazon is an enduring Standard Commerce distribution network monopoly, because Amazon is the only entity that has aggregated most all commercial inventory supply, suppliers, consumer demand, logistical fulfillment, and delivery.

Over five million suppliers[63] sell through Amazon Marketplace, with 100,000 sellers earning at least $100,000 a year.[64] Over half of online product searches start on Amazon's network.[65] And Amazon's network captures over half of all ecommerce revenue growth,[66] while comprising over 43% of all consumer online spending.[67]

This means Amazon's ecommerce platform services dominance enables it to anticompetitively front-run and disadvantage its 5m suppliers/direct-competitors with no accountability, which practically must sell through Amazon Marketplace to reach online consumer demand. For Amazon's competitors on Amazon Marketplace, they know Amazon is player, coach, referee, owner, league commissioner, police, prosecutor, judge, jailer, executioner, taxer, advertiser, and legislator, of this anticompetitive, unregulated, unaccountable, non-transparent, economy-wide marketplace.

Four Core Derivative Cartelizations of The Information Economy

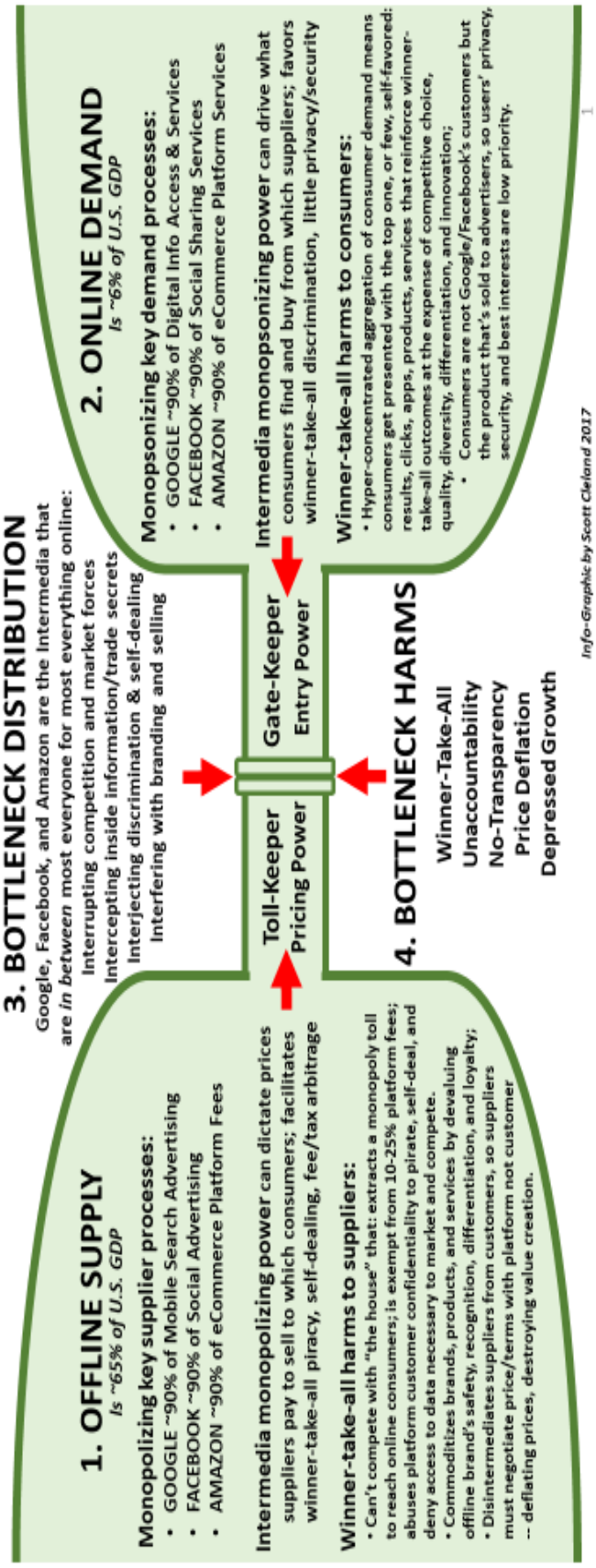
1. ***Intermedia Cartelization Bottlenecking the Economy:***

Dominant intermediary online platforms -- Google, Facebook, and Amazon – are the intermedia in between most everyone for most everything online – a de facto intermedia cartel and bottleneck economy that's monoposonizing key online consumer processes with gatekeeper entry power and monopolizing key offline supplier processes with toll-keeper pricing power, resulting in intermediary bottleneck harms: winner-take-all, unaccountability, no-transparency, price deflation, and depressed growth. (See infographic on next page.)

What is critical to understand here is that Google, Facebook, and Amazon do not compete *directly* with each other for arguably 80-90% of each company's revenues, and that they could be each other's biggest potential competitors by far, if they had not tacitly, implicitly, or complicitly agreed to divide the market and allocate customers to maximize their winners-take-all cartel returns.[68]

Expect the Intermedia monopolies to claim competitive rivalry with each other in *new* markets like: spoken, facial, and biometric interfaces, machine learning, artificial intelligence, augmented reality, autonomous transport, etc., where they will claim they are just one garage entrepreneur from total disruption.

[63] https://www.entrepreneur.com/article/303532
[64] https://www.entrepreneur.com/article/303532
[65] Https://www.recode.net/2016/9/27/13078526/amazon-online-shopping-product-search-engine
[66] https://www.cnbc.com/2017/02/01/amazon-captured-more-than-half-of-all-online-sales-growth-last-year.html
[67] http://www.businessinsider.com/amazon-accounts-for-43-of-us-online-retail-sales-2017-2
[68] http://googlemonitor.com/wp-content/uploads/2017/10/Winner-Take-All-Financial-Results-of-"Google-Laxter-Antitrust".pdf



2. Digital Advertising Cartelization:

Google and Facebook, fiercely competing each other directly and social in 2012- after abruptly stopped competing directly against in search 13,

in 2014,[69] and then their joint revenue share of digital ad growth tellingly went rapidly and steadily from ~67% to >100% digital ad growth from 2015-2017, telltale signs of a cartelization and monopolization.[70]

Google and Facebook aren't a "digital duopoly" of competitors, but a de facto digital advertising cartel of complements who have apparently illegally divided up the market and allocated customers.[71] Google is specializing in lead generation, local business visibility, hard news, and jobs. Facebook is specializing in brand awareness, interactivity, and soft content like entertainment and lifestyle.[72] Digital advertiser customers apparently are treated as always wrong, because they publicly complain harm that there's no basic accountability for what they are buying, its value, brand safety, or ROI.

Amazon now plans to grow its digital advertising business quickly and become a third digital ad cartelist.[73] Its entry will not create a "digital ad triopoly," but an expansion of the "Goobook" digital ad cartel into a "Goozonbook" digital advertising cartel. That's because, like Google and Facebook are ad complements, not direct ad competitors, Amazon is an advertising complement to both Google and Facebook, which are natural partners because like Google ceded Google+ social advertising to Facebook and Facebook ceded Facebook-Bing search advertising to Google.

Google's ad platform can't serve ads inside Facebook and Facebook's ad platform can't serve ads in Google's apps. By extension, and importantly, Google and Facebook can't deploy their advertising platforms inside Amazon's app, and Amazon cannot use its growing Amazon ad-serving platform inside the Facebook app, and Amazon does not have a search capability to search all the info Google has outside its Amazon app, so it cannot serve its ads in Google's apps or in search. In digital advertising, Google, Facebook, and Amazon are monopolizing complements, not direct competitors.

If the world's advertisers and non-Google/Facebook advertising companies are concerned and harmed by the current trajectory and value destruction of the "Goobook" digital ad cartel, that concern and harm only will accelerate, expand, and metastasize much more destructively when Amazon becomes the third standard monopoly distribution network[74] to comprise the "Goozonbook" digital ad cartel.

Amazon is in the process of opening its advertising spigot wide[75] to create yet another Amazon self-dealing cash cow and growth engine; and create another way for Google to non-transparently and anti-competitively demote and poach Amazon's competitors on Amazon Marketplace, by effectively forcing their competitors to buy "protection advertising" to maintain their ranking, placement, and

[69] http://precursorblog.com/?q=content/why-did-google-facebook-stop-competing-with-each-other
[70] http://precursorblog.com/?q=content/google-facebook-ad-cartel%E2%80%99s-collusion-crushing-competition-comprehensively
[71] http://precursorblog.com/?q=content/google-facebook-ad-cartel%E2%80%99s-collusion-crushing-competition-comprehensively
[72] https://www.hollywoodreporter.com/news/facebook-google-leading-internet-domination-advertising-1063811
[73] http://www.businessinsider.com/wpp-ceo-sir-martin-sorrell-amazon-keeps-me-up-worrying-at-night-2017-3
[74] http://precursorblog.com/?q=content/google-amazon-facebook-are-standard-monopoly-distribution-networks
[75] https://www.marketingdive.com/news/wsj-wpp-publicis-omnicom-to-spend-combined-800m-on-amazon-in-2018/512365/

success via Amazon, just like Google originally, long extracted powerful advertising growth by forcing trademarked brands to buy search ads on their brand names so their competitors could not.

3. *Search Ecosystem Cartelization:*

After former Google antitrust counsel, Renata Hesse became Acting DOJ Antitrust Chief in 11-19-12 and orchestrated the 1-3-13 shutdown of all five FTC-Google antitrust probes in 44 days,[76] including its Android-tying probe secretly with no vote,[77] all Google mobile search competition eventually went away outside China, Russia, and South Korea.

In 2014, after Google exited social and Facebook exited search,[78] then Microsoft, without Facebook's scale exited display ads,[79] and consequently had to admit defeat in mobile OS,[80] which in turn predictably kneecapped the competitiveness of Microsoft's Bing search and Cortana assistant, which in turn predictably forced Apple's Siri in 2017 to drop Bing for Google voice search.[81]

So predictably, like a set-up game of Dominoes, Google apparently orchestrated a brilliant search cartelization strategy where in apparently colluding with Facebook to remove the linchpin of Facebook's #1 most linked site and #3 most trafficked site in the world,[82] from Microsoft Bing search and advertising capabilities, Google eviscerated its #1 and #2 search competitors, and in time predictably forced Apple Siri into the Google voice search fold as well.

Thus, Google apparently and successfully, anticompetitively shifted much of the competitive rivalry that existed in 2013 with Google from Facebook, Microsoft, and Apple, into less-rivalrous 2015-2017 collaboration[83] – to foster a mutually-beneficial, winner-take-all, less competitive marketplace. See the telling winner-take-all scorecard here.[84]

4. *Keiretsu-like Cartelization of America's Non-Disruptive Start-up Crib:*

Anyone familiar with Silicon Valley's Internet and information technology financing ecosystem of seed capital, start-up incubation, venture capital, and private secondary market investment, knows

---

[76] http://precursorblog.com/?q=content/google%E2%80%99s-government-influence-nixed-competition-winner-take-all-results
[77] http://precursorblog.com/?q=content/does-us-antitrust-law-apply-google
[78] http://precursorblog.com/?q=content/why-did-google-facebook-stop-competing-with-each-other
[79] https://www.csmonitor.com/Technology/2015/0630/Microsoft-gets-out-of-advertising-sells-display-ads-division-to-AOL-AppNexus
[80] https://techcrunch.com/2015/06/16/microsoft-drops-a-new-windows-10-mobile-build-finalizing-cortana-and-smoothing-the-ui/
[81] https://www.engadget.com/2017/09/25/apple-drops-bing-for-google-on-siri-and-macos-searches/
[82] https://www.alexa.com/topsites
[83] http://precursorblog.com/?q=content/google%E2%80%99s-government-influence-nixed-competition-winner-take-all-results
[84] http://googlemonitor.com/wp-content/uploads/2017/10/Winner-Take-All-Financial-Results-of-"Google-Laxter-Antitrust".pdf

it is an exceptionally homogeneous, interlocking, incestuous, anticompetitive, winner-take-all monoculture.[85]

Inputs drive outputs and extraordinary network effects ensure their power grows and extends inexorably -- because it can.

There has been near zero antitrust enforcement of this de facto American keiretsu cartel ecosystem for many years, in part because there has been a de facto "no touch" info-tech industrial policy of info-tech un-regulation, and celebration of American winner-take-all, Internet industrial policy, national champions at home and abroad.

This winner-take-all essence is an open secret and was aptly exposed by venture capitalist Om Malik in 2015.[86] Ironically, Alphabet-Google Chairman Eric Schmidt has provided some of the best and most candid explanations of this intermedia, winner-take-all, phenomenon.

> In 2011, Dr. Schmidt explained: "*The fastest path to wealth is the construction of these digital platforms, in which a* ***company becomes the center of activity and where other people depend on you***."[87] [Bold added for emphasis.]
>
> In 2012, he elaborated: "***We believe that modern technology platforms, such as Google, Facebook, Amazon, and Apple are even more powerful than people realize****. These platforms constitute* ***a true paradigm shift****, and what gives them power is their ability to grow – specifically their speed to scale. Almost nothing, short of a biological virus, can scale as quickly, efficiently or aggressively as these technology platforms, and* ***this makes the people who build, control, and use them powerful too****."*[88] [Bold added for emphasis.]; [Note: Apple is not an online intermedia company and thus hasn't continued its growth.]
>
> In 2013, Dr. Schmidt concluded: "*Platforms are where the aggregated value occurs; the way the industry creates wealth is creating platforms*."[89]

This purposeful, inherent winner-take-all dynamic is critical to understanding how all the cartelizations and monopolizations chronicled above happened, because this Keiretsu-like cartelization of the financing ecosystem of much of Silicon Valley is held up by one critical tentpole assumption – that Clayton Christensen's[90] "disruptive innovation" theory[91] -- is totally sound, because Silicon Valley has owned it, clothed in it, and preached it as gospel.

---

[85] http://precursorblog.com/?q=content/why-us-antitrust-non-enforcement-produces-online-winner-take-all-platforms
[86] https://www.newyorker.com/tech/elements/in-silicon-valley-now-its-almost-always-winner-takes-all
[87] https://www.cnet.com/news/schmidt-want-to-get-rich-build-a-platform/
[88] https://www.webpronews.com/eric-schmidt-has-a-book-coming-out-google-is-more-powerful-than-most-people-realize-2012-12/
[89] http://www.zdnet.com/article/eric-schmidt-on-privacy-platforms-and-big-data-business-opportunities/
[90] http://www.claytonchristensen.com/
[91] http://www.claytonchristensen.com/key-concepts/

As evidence to the contrary has come forward, that tentpole "disruptive innovation" assumption has proved to be increasingly and demonstrably false. Professor Christensen's essential premise, that there will always be disruptively innovative competitors that can slay any established information technology based monopoly, depends on the unacknowledged, and glossed over, central assumption that the Silicon Valley startup investment process and ecosystem must be a competitive free market for that to be able to happen, and not the apparent cartelized, winner-take-all, American-version of the Japanese Keiretsu[92] that it apparently has become.

The chances are miniscule that a magical "unicorn," garage-based, entrepreneur or startup is capable of sneaking up and mugging Google, Amazon, or Facebook to steal their proverbial lunch money today, let alone disrupt and supplant their entire franchises long term, when the intermedia has de facto control the disruption-funding complex to ensure that only they do the disrupting in their spaces, and don't get disrupted in their space by anyone coming from over the horizon in an autonomous garage.

The cold obvious reality in Silicon Valley is any true potential startup competitive threat to the intermedia monopolies are either stolen from in the non-disclosure, seed, or venture stages;[93] domesticated via investments in the seed, venture, capital, or secondary investment round; bought post IPO;[94] crushed in the marketplace;[95] or "Keiretsu-ed" early.

An American Keiretsu Vignette

To see a facet of America's Keiretsu-like cartel, consider the incestuous Google-Amazon-Waymo-Softbank-Uber-Lyft-Softbank-Airbnb keiretsu-ing dynamic. Amazon's Jeff Bezos was among the first investors in Google.[96] Both Google and Amazon CEO Jeff Bezos[97] are big early investors in the two biggest online winner-take-all wannabe platforms, Uber[98] and Airbnb[99] [100] that could potentially compete with Alphabet-Google-Waymo in the autonomous vehicle market or with Amazon in the autonomous delivery space. Convenient.

[92] https://en.wikipedia.org/wiki/Keiretsu
[93] http://precursorblog.com/?q=content/stealing-competitors-%E2%80%9Chow-google-works%E2%80%9D
[94] http://precursorblog.com/?q=content/google-facebook-ad-cartel%E2%80%99s-collusion-crushing-competition-comprehensively
[95] http://precursorblog.com/?q=content/google-facebook-ad-cartel%E2%80%99s-collusion-crushing-competition-comprehensively
[96] http://allthingsd.com/20091005/new-yorker-bezos-initial-google-investment-was-250000-in-1998-because-i-just-fell-in-love-with-larry-and-sergey/
[97] https://blogs.wsj.com/digits/2013/08/05/a-stroll-through-the-many-many-many-investments-of-jeff-bezos/?mg=prod/accounts-wsj
[98] https://techcrunch.com/2013/08/22/google-ventures-puts-258m-into-uber-its-largest-deal-ever/
[99] https://www.thestreet.com/story/13750668/1/google-invests-in-airbnb-tesla-s-busy-week-mdash-tech-roundup.html
[100] https://blogs.wsj.com/digits/2013/08/05/a-stroll-through-the-many-many-many-investments-of-jeff-bezos/?mg=prod/accounts-wsj

Even more convenient, Google Capital led the big fundraising rounds for *both* of its potential transportation-as-a-service competitors: Uber[101] (for $258m and getting Google's Chief Legal Officer on Uber's board in 2013 and leaving in August 2016)[102] and Lyft[103] (for $1b and getting Google's CapitalG partner, David Lawee, on Lyft's board in October 2017)[104] ensuring that no other entity could know more inside information and deepest anticompetitive[105] intelligence on Uber and Lyft than their biggest overall competitive threats, Google-Waymo and Amazon transportation services.

Now that Google has repositioned itself from partnering with Lyft versus Uber, Softbank is filling in behind Google at Uber and now has an influential share of Uber, and killed Uber's valuation momentum with a rumored 30% funding round haircut.[106]

This would not be as noteworthy but for Google and Softbank's lucrative Keiretsu-like, cartel collusion, in facilitating Google's monopolization of the Japanese search market in 2010. In July 2010, SoftBank's Yahoo Japan subsidiary outsourced Yahoo Japan's dominant #1 search and advertising monetization platform to the #2 competitor in Japan, Google, which gave Google a 90% search advertising monopoly in Japan.[107]

Amazingly, SoftBank was able to persuade Japanese antitrust authorities to sign off on the de facto monopolization deal. That same month in 2010, SoftBank strategically co-invested in Zynga with Google corporate,[108] not Google Ventures. And in 2011, SoftBank was an early Japanese big corporate adopter of Google Apps for its 26,000 employees,[109] and also launched an Android-powered "Yahoo-phone" in Japan.[110]

Importantly, Softbank and Google's founders both started in then software/Internet business and then evolved and converged their tech-rooted businesses into communications. And more importantly, both share an entrepreneurial-founders' kinship for thinking big, looking ahead, taking big risks, and leveraging big technological disruption against incumbents to grow.[111]

Most recently, Softbank bought Robotics company Boston Dynamics from Alphabet-Google after it tried unsuccessfully to sell it for a year given the creepy scary nature of the robots to many people.[112]

This evident keiretsu-like cartel dynamic is best exposed in learning how extraordinarily concentrated this market sector is relative to the rest of the economy, and how that happened.

---

[101] https://techcrunch.com/2016/08/29/alphabets-david-drummond-leaves-ubers-board-amid-mounting-competition/
[102] https://techcrunch.com/2013/08/22/google-ventures-puts-258m-into-uber-its-largest-deal-ever/
[103] https://blog.lyft.com/posts/alphabet-capitalg-leads-1-billion-round-in-lyft
[104] http://www.mercurynews.com/2017/10/19/google-parent-leads-1b-lyft-investment-deepening-uber-rift/
[105] http://marketrealist.com/2017/04/can-googles-waze-carpool-put-uber-out-of-business/
[106] http://www.latimes.com/business/technology/la-fi-tn-uber-softbank-20171128-story.html
[107] https://www.wsj.com/articles/SB10001424052748703940904575394854222773696
[108] http://blogs.reuters.com/mediafile/2010/07/12/google-buys-into-zynga-report/
[109] https://cloud.googleblog.com/2011/08/google-apps-is-big-in-japan.html
[110] http://vrzone.com/articles/forget-google-phones-softbank-unveils-yahoo-phone-in-japan/13337.html
[111] https://dealbook.nytimes.com/2010/12/13/a-key-figure-in-the-future-of-yahoo/
[112] https://techcrunch.com/2017/06/08/softbank-is-buying-robotics-firm-boston-dynamics-and-schaft-from-alphabet/

Extraordinary Market Concentration Facilitates American Keiretsu-ization

The public data shows that the top three Internet companies, Google, Amazon and Facebook are *over seven times more concentrated* than the top three offline companies, Walmart, Apple and Berkshire Hathaway, and that the top ten Internet economy companies are ten times more concentrated than the top ten offline economy companies.[113]

Consider the winner-take-all, voracious serial, early-stage, appetite for acquisitions that have effectively arbitraged the antitrust relevance of the Clayton Act out of existence for the intermedia: e.g. Alphabet-Google >200 acquisitions in 19 years;[114] Microsoft >200 in 30 years;[115] Apple >90 in 29 years;[116] Amazon ~80 in 19 years;[117] and Facebook >60 in 12 years.[118]

Before Silicon Valley's refocused on robotics in 2013, Google had bought eight of the more promising robotics startups.[119] Google also swept in ahead of the curve to buy up most of the top artificial intelligence teams in acquihires[120] and via DeepMind.[121]

Some of this is normal business in a fast-moving free market. However, much of it apparently is not, and requires vigilant antitrust oversight that has apparently AWOL over the last several years.

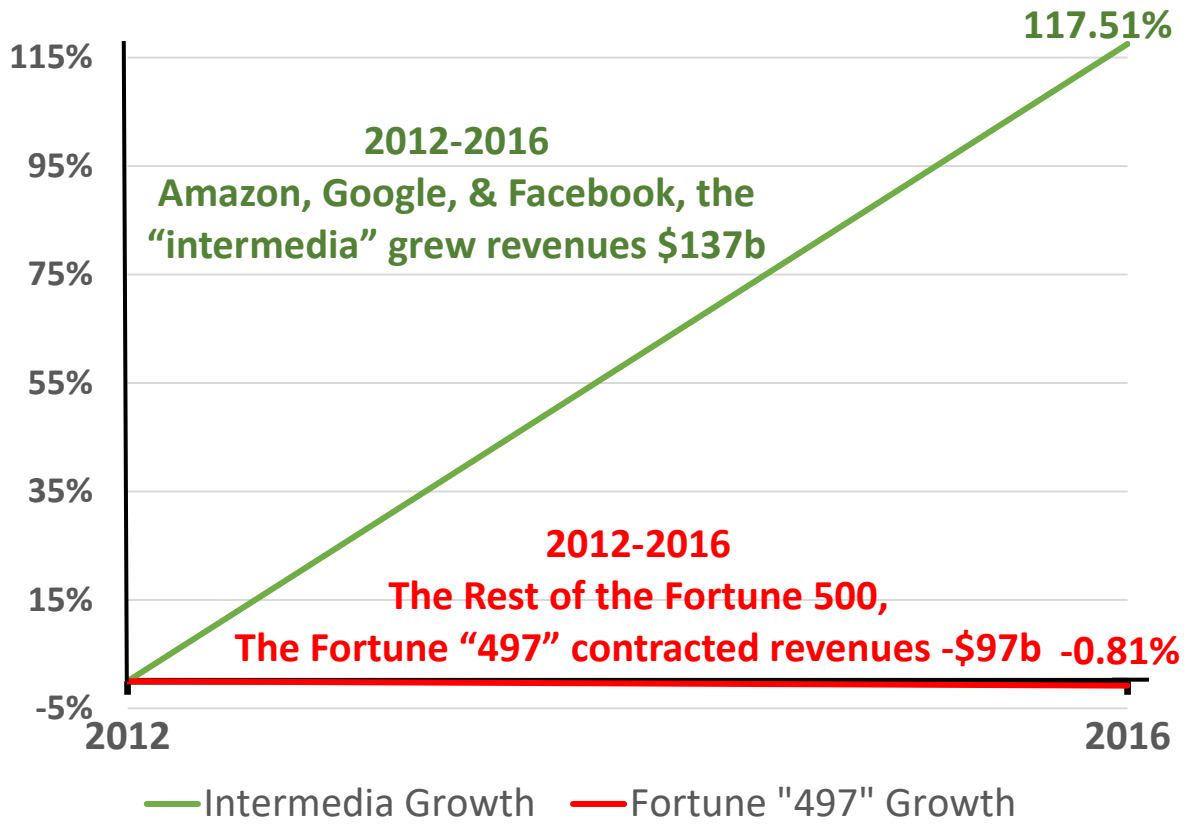
In a nutshell, the credibility of America's antitrust enforcement is lessened because what antitrust law and enforcement were designed and purposed to prevent, has occurred, spread broadly, serially, and systemically, and is only getting worse, with minimal action to resolve this problem.

The facts and evidence in the public domain, prove there are three standard monopsony/monopoly distribution networks, Google Standard Data, Facebook Standard Social, and Amazon Standard Commerce, that *at least are in the process of monopolizing their sectors and destroying the process of competition*, and prove that they and other colluders are *at least in the process of cartelizing* over half of the U.S. economy, by dividing up markets and allocating customers with apparent impunity.

[113] http://precursorblog.com/?q=content/debunking-edge-competition-premises-fcc-2015-title-ii-broadband-order-%E2%80%93-fcc-comments
[114] https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Alphabet
[115] https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Microsoft
[116] https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Apple
[117] https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Amazon
[118] https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Facebook
[119] https://www.cbsnews.com/news/google-buys-8-robotics-companies-in-6-months-why/
[120] http://time.com/3815612/silicon-valley-acquisition/
[121] http://www.bbc.com/news/technology-25908379

This is What
The Intermedia Winner-Take-All Growth Effect
Looks Like

2012-2016, Amazon/Google/Facebook's winner-take-all capture of all Fortune 500 overall revenue growth depressed Fortune 497 revenues that comprise 64% of USGDP



Fortune 500 Revenues

2012 # from: http://www.magazine.org/node/24056
http://www.cbsnews.com/news/fortune-500-revealed-2017-list-revenue-largest-corporations/

2016# from:

AMZN+GOOG+FB Revenues www.Statista.com

USGDP Growth

Source: U.S. Bureau of Economic Analysis

Current-dollar and "real" GDP (Excel)

https://bea.gov/national/index.htm#gdp

This section of the white paper will spotlight how the U.S. Internet industrial policy standards spotlighted below have badly conflicted with, undermined, and encouraged mass arbitrage of U.S. antitrust enforcement, and the application of the otherwise sound free-market-based, Chicago School, antitrust consumer welfare standard, for all companies, including online intermediary platforms.

Let me be clear, **America's most serious antitrust law enforcement problems originate from America's Internet industrial policy** that thwarts and distorts free-market competition and confounds antitrust law enforcement by powerfully-advantaging Internet platforms, over their non-Internet competitors, and putting Internet companies' welfare interests first, and consumer welfare interests last.

It is no coincidence that all the monopsonizations/monopolizations and cartelizations in the American marketplace today exclusively involve online intermediary platforms, and that they are happening in the only country in the world with a longstanding official, Internet industrial policy.

This is not complicated. It is simple and obvious, once exposed. Inputs drive outputs. Policies that favor one outcome over another, produce government-chosen winners and losers -- not competition-driven winners and losers.

The government is the problem here kneecapping both the market competition and antitrust enforcement processes with anticompetitive, Internet industrial policy.

In a nutshell, this section of the white paper proves that antitrust law enforcement naturally becomes dysfunctional, and can't work as designed, when antitrust law assumes a free market that does not exist anymore in America, because of America's de facto, twenty-year, Internet industrial policy, embedded in the 1996 Telecom Act, which created three competition double standards where Internet intermediary companies are: advantaged over competitors offering similar services; uniquely granted protection from the federal and state regulation to which all other companies are subject; and immunized from civil liability for actions or inactions which all other companies have civil liability.

This is not a free market, but a favored market, via a U.S. Internet industrial policy that asymmetrically advantages Internet companies in every way to win competitively and destines non-internet companies to lose competitively.

The three de facto Internet industrial policy standards in the 1996 Telecom Act[122] that effectively advantage Internet intermediaries over all other companies with asymmetric government treatment, follow.

1. ***Competition Double Standard***:

   The 1996 Telecom Act now regulates the same internet-integrated, communications-information, technologies oppositely, despite the full Internet convergence of communications and information technologies since 1996.

   In America if one is originally a communications-information technology company, one is legacy regulated with technology-specific, legacy communications regulation: 1934 telecom/wireless service, 1934 radio broadcast service, 1943 TV broadcast service, 1984 cable service, or 1962 satellite service, with new services potentially requiring government authorization, licensing or approval; new

[122] https://www.fcc.gov/general/telecommunications-act-1996

devices requiring government inspection and approval; and ongoing consumer protection obligations for privacy, safety, etc., which all create substantial time-to-market, and compliance and capital cost competitive disadvantages relative to information technology companies engaged in the same businesses.

However, if one is originally an information technology company offering communications services using Internet protocol, one is unregulated, meaning one has huge time-to-market and cost competitive advantages.

Simply, when the Internet protocols totally blur the distinction between information and communications technologies, a competition double standard of dissimilar treatment of similar services, means information technology companies offering communications services are competitively advantaged to win over communications technology companies offering information services.

This makes no sense today, other than it used to make sense before the Internet converged everything technologically and commercially. It is ironic that the most technologically advanced companies dominate because they support the competition double standard and actively urge that this competition double standard get more asymmetric and unfair not more symmetric and fair.

America's Anticompetitive Double Standard for Communications vs. Information Technologies

Asymmetric absurdity: asymmetric regulation of symmetric functions/services for the same consumers is anticompetitive

Communications Technologies FCC-Regulated **Radio, Telecom, TV, satellite, cable, wireless, & broadband firms** ***Are, or Can Be, Subject to Legacy FCC Public Interest Duties & Laws***	**Internet/Information Technologies Unregulated** **Google, Facebook, Amazon, & Internet Association** ***Section 230-Immunized from Most Public Interest Accountability***
Competition Enforcement	**No Competition Enforcement**
US Ownership limits for cable, TV, radio & newspaper firms	No ownership/partnership limits to ensure diversity of views
Mergers reviewed by DOJ & the FCC public interest test	Only FTC reviews mergers with implied section 230 immunity
Competitive measures/performance determine regulation	No behavior, performance, or action risks FCC enforcement
National Security/Law Enforcement	**No National Security/Law Enforcement**
Must comply with FBI-CALEA/FISA-national security warrants	Claim immunity from FBI-CALEA/FISA-national security duties
Must comply with state & local law enforcement authorities	Claim immunity from state/local law enforcement authorities
Public Safety Duties	**No FCC Public Safety Duties**
Subject to homeland security, emergency preparedness regs	Claim immunity for hosting sex trafficking & terrorist content
Privacy Enforcement	**No FCC Privacy Enforcement**
Subject to wiretap, telecom, wireless, video privacy/data regs	Ignore wiretap/privacy laws, immunized recording/using data
Public Interest Obligations	**No FCC Public Interest Obligations**
Subject to FCC indecency, EEO, localism, or children regs	No FCC indecency, EEO, children/consumer protection duties
FCC election ad discount, reporting, & transparency duties	No election ad discount, reporting, & transparency duties
Subject to reasonable network & non-discrimination duties	No reliability, reasonable network, non-discrimination duties
Infrastructure rights of way and local franchise obligations	No cloud infrastructure rights of way or local franchise duties

Info-graphic by Scott Cleland Precursor 2017

It is important to note that Section 601(b)(1) of the 1996 Telecom Act makes clear: "*nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws*."[123] Antitrust authority remains to address these problems.

[123] https://transition.fcc.gov/Reports/tcom1996.pdf

2. Wild West Standard.

Section 230 of the 1996 Telecom Act says: "*It is the policy of the United States… to preserve the vibrant and competitive free market that exists for the Internet and other interactive computer services, unfettered by Federal or State regulation*;"[124]

Over the last twenty years this policy has been interpreted by online intermediary platforms to mean that Federal, State, and local regulations do not apply to Internet companies until a court formally rules that they do, and that adverse ruling is upheld upon appeal. This de facto "we are above rules and outside the law" Section 230 Internet Wild West ethos means, on civil matters, many Internet companies routinely flaunt laws that non-Internet companies obey and must obey.

It should be no surprise that a U.S. policy enshrined in law for twenty years, **that effectively divides America into two accountability classes** -- one Wild West class for Internet intermediary companies which are exempt from most civil federal, state, and local regulatory accountability, and one civilized class, for the rest of America that remains subject to civil federal, state, and local regulatory accountability -- leads to divisive and polarizing outcomes in America.

No surprise, these polarized commercial standards -- where the U.S. government favors the Wild West standard over the civilized standard expected when people are off-net -- seem to be bleeding over and contributing to widely-appreciated polarization of American commercial and societal outcomes like those favoring: Wild West over civilized society; consumer non-protection over consumer protection; social division over social cohesion; incivility over civility; depreciating trust over building trust; unfair playing field over level playing field; winner-take-all over competition; technology over people; automation over employment; etc.

3. Tech Welfare Standard.

Section 230 has twenty-six words that provide sweeping immunity from civil liability for intermediary platforms. "*No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider*."[125]

Before I explain how this liability immunity provision has transmogrified into a necessary pre-condition for online intermediary platform monopolization, some brief context and background are necessary to understand the asymmetric and anticompetitive essence of this seminal Section 230 Internet authority.

Important Section 230 Background: In 1996, a well-intentioned Congress passed a balanced Communications Decency Act (CDA) as an amendment to the 1996 Telecom Act, that on one

[124] http://googlemonitor.com/wp-content/uploads/2017/10/Winner-Take-All-Financial-Results-of-"Google-Laxter-Antitrust".pdf
[125] https://www.law.cornell.edu/uscode/text/47/230

hand would prevent "*obscene, harassing, and wrongful utilization of telecommunications facilities*" (Title V) and on the other hand, would create legal "*protection for 'Good Samaritan' blocking and screening of offensive material*" (Title II, Section 230).[126]

Together, Congress intended that certain content was harmful, thus it made sense to provide "Good Samaritan" immunity for websites that in good faith removed the types of content the original CDA found harmful.[127]

However, in 1997, the Supreme Court overturned the consumer-protection and responsibility part of the CDA as poorly-written law that violated the First Amendment but kept the other half of the "balanced" act, the "Good Samaritan" intermediary liability protection.[128]

This unintended consequence made the symmetric CDA asymmetric, untethering Section 230 from its original moorings intended by Congress.

This unintended asymmetric outcome has created a perverse dynamic. Rather than the purpose of the "*protection for 'Good Samaritan' blocking and screening of offensive material*" if they helped prevent "*obscene, harassing, and wrongful utilization of telecommunications facilities*" -- the asymmetric section 230-only CDA provides intermediaries immunity for whatever they do or ***don't do*** about wrongful or criminal-related activity on their websites.

Practically it asymmetrically immunizes willful negligence online that's not tolerated offline. The Supreme Court's asymmetric overturning of the CDA in 1997 effectively has absolved websites from normal accountability for: enabling criminal child sex trafficking like BackPage.com has; and protecting intermediaries like Google-YouTube that hosts known terrorist recruitment videos, and Facebook that live broadcasts torture, rape and murder.

Simply, Congress in the CDA created the special privilege of 'Good Samaritan' immunity from liability to ensure special responsibility for communications decency, but in practice the courts have transmogrified Section 230 sadly into a special privilege that comes with no public responsibility.

Section 230 is also asymmetric because it is U.S. only. The U.S. is the only country in the world that blanket immunizes its companies from responsibility or accountability for what happens over time on their platforms that could harm U.S. citizens or citizens of other countries.

The UK is cracking down on Google-YouTube, Facebook, Twitter, and Amazon expecting these platforms to remove terrorism-encouraging posts within 2 hours of posting with the

[126] https://en.wikipedia.org/wiki/Communications_Decency_Act
[127] http://www.cybertelecom.org/cda/cannon2.htm
[128] http://www.cnn.com/US/9706/26/cda.overturned.hfr/index.html

goal of preventing such content from being posted at all. Unabated terrorism is compelling the EU to head in that same direction.[129]

The most powerful aspect of Section 230's asymmetric accountability is that it *practically* only applies to U.S. online platforms that *originated* online. Practically, U.S. companies that conduct much of their business in the physical world and not via their website, may technically enjoy Section 230 immunity for their online traffic, but that immunity practically does not travel to immunity for their offline business, so practically they don't do anything online that is contrary to the interests and obligations of their predominant offline business.

The Internet Association, in its Policy Platform document for the 2016 Presidential election, advocated for their #1 public policy priority, section 230 intermediary liability, in this way:[130]

> "*From its inception, the internet was built on an open architecture **that lowers barriers to entry**, fosters innovation, and empowers user choice. The internet should be free from censorship. It should be protected by simple and enforceable rules that ensure consumers' unfettered access to the content they want, **without holding internet platforms liable for user behavior online**." "Intermediary liability laws protect free speech and creativity on the internet. Specifically, Section 230 of the Communications Decency Act (CDA) and the safe harbors of the Digital Millennium Copyright Act (DMCA) **provide essential liability protections that have allowed internet platforms to scale and diversify.** Section 230 of the CDA **shields internet providers from liability related to the speech of their users and requirements to police their users' actions***." [Bold added for emphasis.]

"***Essential liability protections that have allowed internet platforms to scale and diversify***." Let parse this tell. The "**Internet platforms**" (Google, Amazon, and Facebook, and the Internet Association[131]) consider Section 230 liability immunity as "**essential**" to "**allow**" and "**shield"** their platforms "**to scale**" and "**diversify**."

First, the Internet Association, which "Internet platforms" Google, Facebook and Amazon founded, consider preserving the status quo of this obscure, twenty-one-year-old section 230 intermediary immunity from liability provision in the 1996 Telecom Act, **to be their collective #1 national public policy priority out of ten priority issues** in their public policy platform document. Why guard something more than any other thing when no one is really threatening it?

The answer is that the "**Internet platforms**" (Google, Amazon, and Facebook,) consider the Section 230 liability immunity "**essential**" "**to scale**" and "**diversify**."

Translation: Section 230 absolves Google, Facebook, and Amazon of responsibility to police or curate user content to their sites. Section 230 means no friction because there is no cost or risk to the Internet platform for taking whatever content a user uploads to the site.

---

[129] https://techcrunch.com/2017/09/20/tech-giants-told-to-remove-extremist-content-much-faster/
[130] https://internetassociation.org/wp-content/uploads/2016/07/Internet-Association-Policy-Platform-2016.pdf
[131] https://internetassociation.org/

Remember the most important part of the internetwork effect-fueled, perpetual flywheel dynamics, of these distribution network monopolies, is being perceived as the networks with the most scale and breadth of offering: i.e. info/inventory, users/demand, products/inventory, services/inventory, suppliers/supply, etc. Simply, their irresponsibility to take all comers, regardless of truth, legitimacy, legality, consumer harm, is a huge monopoly/anticompetitive advantage over those who curate or police their sites to protect their users and others from harm.

Remember what Google's Chairman Eric Schmidt explained in 2012: "***We believe that modern technology platforms, such as Google, Facebook, Amazon, and Apple are even more powerful than people realize***. *These platforms constitute* ***a true paradigm shift****, and what gives them power is their ability to grow – specifically their speed to scale. Almost nothing, short of a biological virus, can scale as quickly, efficiently or aggressively as these technology platforms, and* ***this makes the people who build, control, and use them powerful too****."*[132] [Bold added for emphasis.]

In short, any curation or policing of their platforms, i.e. responsibility or accountability, is "friction," that doesn't allow them to maximally grow their scale, reach and scope to maintain and extend their monopolies.

Simply, Google, Facebook, and Amazon, are signaling that they consider this lack of friction in their model, friction that is normal corporate responsibility and accountability to consumers, suppliers, and the law that their competitors have, as critical to their monopolization and cartelization processes.

This space is intentionally blank.

[132] https://www.webpronews.com/eric-schmidt-has-a-book-coming-out-google-is-more-powerful-than-most-people-realize-2012-12/

Explaining the Anticompetitive Online-Offline Double Standard.

The online-offline double standard's origin is Section 230 of the 1996 Telecom Act, when ~3% of Americans were online versus ~89% today. Unwittingly it created a de facto online exemption from commercial civil law in granting *only* online intermediaries immunity from civil liability.

The Internet Association sees section 230 as a "*safe harbor*" that's provided "*essential liability protections that allowed Internet platforms to scale and diversify.*"

"No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

1. The Offline Standard

Offline = physical world of atoms
Offline companies = businesses *originated* offline
Offline economy = 94% of US GDP, jobs, and taxes

All civil commercial law applies

Offline firms doing business online practically can't ignore laws
Respect for people, property, and rule of law is the norm
Citizens enjoy freedom *from* government injustice and harm
Government *explicit* policy to protect consumers/property owners

2. The Different Online Standard

Online = virtual world of bits
Online companies = businesses *originated* online
Online economy = 6% of US GDP, jobs, and taxes

Section 230 is a de facto commercial law exemption

Online intermediaries presume section 230 amnesty online/offline
Many online platforms have marketed rule-breaking as a benefit
Many can presume freedom *to* do what they want to others online
Government *implicit* policy of consumer non-protection/fair use

3. Different Offline and Online Commercial Civil Law Standards Are Unfair/Anticompetitive

Unfair to People: The same person that has offline rights and due process to right harms civilly, online is treated like a commodity or data without the same rights and minimal recourse for harms done to them online.

Unfair Customer Relationships: Offline firms nurture strong customer relationships. Online winner-take-all platforms effectively disintermediate these relationships and their associated data. This puts the power of choice more in the hands of the online platform, than the consumer. And it turns the offline firm into a commodity that is negotiating its price with the online gatekeeper, not their customer.

Unfair Playing Field: The law tilts the playing field advantaging online firms over offline firms in: opportunity, time, cost, scale, data, risk, and capital. Antitrust in offline markets maintains a minimum of 3-4+ competitors, but online enables serial winner-take-all platforms.

[BACKGROUND NOTE: Those who assume or view the Internet as primarily a *technology*-driven and not a *policy*-driven phenomenon, may wish to review the succinct history of U.S. Internet policy well-sourced below.

> *However, if the reader does not need a summary of the policy origins of the Internet, please skip to the white paper's conclusion at the end of this background note.*

Some Internet industrial policy background is necessary, because the Internet is much less of a "technology" revolution, and much more a Government policy revolution because the original Internet protocols were created and originally used by the U.S. Government exclusively,[133] *before the U.S. Government decided* to: expand its use outside government;[134] privatize its backbone architecture;[135] legislate its definition, classification, immunities, and policy;[136] and set its global use and growth framework for the rest of the world.[137]

The Internet's essence, the Internet Protocol that enables networks of networks to be interoperable, is a computer packet-switching communications protocol invented by the U.S. Defense Department's Defense Advanced Research Projects Agency (DARPA).[138] [139]

It was then implemented as the Advanced Research Projects Agency Network[140] around 1970 as ARPANET,[141] and during the 1970s, it served as the U.S. Government's nascent "Internet," network of networks protocol suite for the Defense Department and cooperating government researchers. In the 1980s, in coordination with the National Science Foundation, the government's expanding "Internet" joined with civilian supercomputer researchers' Computer Science Network (CSNET).[142]

On a parallel track, from the 1960s through the 1980s, the FCC evolved the AT&T monopoly regulatory paradigm to accommodate computer data networks, via three successive FCC rulemakings called "Computer Inquiries." Computer I was in the 1960s.[143] Computer II was in the 1970s.[144] And Computer Inquiry III was in the

---

[133] https://tools.ietf.org/pdf/rfc33.pdf
[134] https://en.wikipedia.org/wiki/CSNET
[135] http://www.nytimes.com/1994/10/24/business/us-begins-privatizing-internet-s-operations.html
[136] https://www.fcc.gov/general/telecommunications-act-1996
[137] http://www.w3.org/TR/NOTE-framework-970706
[138] https://www.darpa.mil/
[139] https://en.wikipedia.org/wiki/DARPA
[140] https://en.wikipedia.org/wiki/ARPANET
[141] https://tools.ietf.org/pdf/rfc33.pdf
[142] https://en.wikipedia.org/wiki/CSNET
[143] http://www.historyofcomputercommunications.info/Book/1/1.4FCCComputerInquiry66-67.html
[144] https://en.wikipedia.org/wiki/Second_Computer_Inquiry

1980s.[145] Simply, the FCC created a parallel unregulated data communications paradigm and service that was in effect protected from the AT&T monopoly, and which successfully fostered the computer and information technology innovation revolution, in the second half of the 20th century, via purposefully disparate treatment of "telecommunications" networks and "computer" networks.

In 1984, the breakup of AT&T compelled by the Reagan DOJ Antitrust Division,[146] created: AT&T as a long-distance company and spun off seven "Baby Bell" local exchange network companies.[147]

The AT&T breakup also created long-distance network infrastructure competition, with MCI and Sprint, that turned out to be an essential pre-condition for the privatization of the Internet backbone in 1994, when the National Science Foundation, with official approval and operational support of the U.S. Government, and with private company participation via Sprint and MCI, privatized the Internet backbone.[148] [149]

In the 1996 Telecom Act, Congress codified the FCC's asymmetric regulatory classification for telecommunications and information services; established a U.S. policy of an unregulated Internet; and granted internet intermediaries permanent immunity from civil liability for most anything users might do on their platforms.[150]

The strongly-bipartisan Clinton Administration 1997 U.S. Framework for Global Electronic Commerce,[151] captures the essence of America's Internet industrial policy.

Its five principles are:

> "*1.* ***The private sector should lead.*** *The Internet should develop as a market driven arena not a regulated industry. Even where collective action is necessary, governments should encourage industry self-regulation and private sector leadership where possible.*
>
> *2.* ***Governments should avoid undue restrictions on electronic commerce.*** *In general, parties should be able to enter into legitimate agreements to buy and sell products and services across the Internet with minimal government involvement or intervention. Governments should refrain from imposing new and unnecessary regulations, bureaucratic procedures or new taxes and tariffs on commercial activities that take place via the Internet.*
>
> *3.* ***Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce.*** *Where government intervention is necessary,*

[145] https://www.fcc.gov/document/computer-iii
[146] http://www.nytimes.com/1981/08/18/business/us-lawyers-press-breakup-of-at-t.html
[147] https://en.wikipedia.org/wiki/Breakup_of_the_Bell_System
[148] http://www.nytimes.com/1994/10/24/business/us-begins-privatizing-internet-s-operations.html
[149] http://www.governingwithcode.org/journal_articles/pdf/Backbone.pdf
[150] https://www.fcc.gov/general/telecommunications-act-1996
[151] http://www.w3.org/TR/NOTE-framework-970706

its role should be to ensure competition, protect intellectual property and privacy, prevent fraud, foster transparency, and facilitate dispute resolution, not to regulate.

4. ***Governments should recognize the unique qualities of the Internet.*** *The genius and explosive success of the Internet can be attributed in part to its decentralized nature and to its tradition of bottom-up governance. Accordingly, the regulatory frameworks established over the past 60 years for telecommunication, radio and television may not fit the Internet. Existing laws and regulations that may hinder electronic commerce should be reviewed and revised or eliminated to reflect the needs of the new electronic age.*

5. ***Electronic commerce on the Internet should be facilitated on a global basis.*** *The Internet is a global marketplace. The legal framework supporting commercial transactions should be consistent and predictable regardless of the jurisdiction in which a particular buyer and seller reside.****]"***

CONCLUSION

The evidence of "America's stunted state of antitrust enforcement" is overwhelming.

Evidently, about half of the U.S. economy is in the process of serial monopsonizations/monopolizations and cartelizations.

Evidently, America has three Standard Oil-like, end-to-end, monopoly distribution networks in the latter stages of the process of monopolizing core functional sectors of the 21st century economy – Google Standard Data, Amazon Standard Commerce, and Facebook Standard Social.

Evidently, Google, Amazon, and Facebook have become the U.S. Government's de facto Internet industrial policy "national champions."

Evidently, these three standard distribution network monopolies have decided either tacitly, implicitly of complicitly, to not compete directly with each other in the 80-90% of the others' core businesses, because they are not.

Evidently, these complementary colluding monopolies are dividing the market and allocating customers, via four apparent cartelization processes: joint-bottlenecking of online consumer demand and offline supply and suppliers; cornering the digital advertising market; cornering the search syndication market; and cornering the Internet startup financing ecosystem so that no upstart has the market opportunity to ever successfully "disrupt" the intermedia.

Evidently, America has an Internet industrial policy that anticompetitively advantages Internet intermediaries over everyone else, and that is inherently a digital division policy that divides: the information technology sector as unique unregulated space, from the rest of the economy which is regulated; the unaccountability of the Wild West Internet standard from the accountability of civilized standards; and the winner-take-all, tech welfare interests of Internet companies from America's antitrust consumer welfare interests.

What is entirely new to U.S. antitrust enforcement in this white paper is the notion that America's outdated Internet industrial policy is the key anticompetitive cause of America's stunted state of antitrust enforcement.

Simply, antitrust law cannot function as designed when other "competition" laws are at war with antitrust law's purposes, and inherently undermine and sabotage the premise of protecting the process of free market competition.

The government is the problem here, and the problem warrants bipartisan blame and attention.

A "golden rule" solution – i.e. equal protection under the law / symmetric online-offline regulation and law enforcement -- can be a rare bipartisan policy opportunity. That's because only ~10% of current Senators and Representatives voted for this counter-productive, 1996 Internet industrial policy experiment, that has long-outlived its usefulness.

Wrapping up, a well-intentioned and strongly-bipartisan, 1990s, Internet industrial policy experiment, designed to favor and advantage ecommerce and Internet interactivity on a nascent Internet above most all else, was tremendously successful in creating a world-leading Internet infrastructure and ecosystem.

However, now that the Internet marketplace is mature, hyper-concentrated, monopsonized/monopolized and cartelized, America's continuing, Internet industrial policy, has become unjust, oppressive, and destructive, in digitally dividing American society and democracy, and replacing the American dream of economic opportunity for all Americans, with an American nightmare of winner-take-all Internet policy.

Forewarned is forearmed.