

The Sunday Brief: The FTC and Google 6 January 2013



Greetings and Happy New Year from Dallas, Little Rock, and Las Vegas, where several of us (160,000 in fact) will be attending both the AT&T Developer Conference (Monday) and the International CES (Tuesday – Thursday). Thanks for the comments on last week’s article. We also had over seventy new additions to The Sunday Brief email list last week. Keep forwarding to your friends!

For the several hundred of you who are new to The Sunday Brief in the past several weeks, a couple of notes about this column. Unlike other industry blogs, its focus is not on one sector (cable, telecom, equipment, social) but on the interconnection and interaction between these industries (partnerships, joint ventures, acquisitions, government intervention). History has taught us that value is made (and lost) in these interactions, and value can shift dramatically when one or more companies misunderstand the opportunity or their partner(s).

One of my first columns ([September 2009, RCR Wireless](#)) asked the question “What’s your company’s Google strategy?” At that time, Google appeared to touch every industry and company, from TV to Maps to Voice to Networks to Android to Books to Music to Search to Storefronts to Health. It was hard to think about an industry Google had not begun to influence.

Since then, Google has moved into many additional areas, including transportation (self-driving automobiles), mobile advertising (AdMob), digital coupons (Zave Networks), fiber networks (Kansas City’s Google Fiber trial), restaurant ratings and travel (Zagat, Frommer’s), social networking (Google+), wearable computers (Google Glasses), and handsets (Motorola). Unlike their competitors, Google has asked “Why Not Now?” more often than they have asked “Why Now?”



Google’s continued expansion resulted in many charges of “unfair” trading practices. The most common complaints related to 1) the display order of Google search results and 2) to the licensing of intellectual property on a fair, reasonable and non-discriminatory basis (see FRAND definition [here](#)). One hit at the core of Google’s business model, while the other posed a threat to the hefty (\$12.2

billion) purchase price of Motorola Mobility. As a result, the FTC began an investigation into Google in early 2011.

This week, the Federal Trade Commission [announced their findings](#). Although many news reports have documented vigorous debate throughout the process, the Commission was unanimous in their findings. Specifically, Google was found to be in violation of pursuing injunctions against competitive products

that required one or more of the patents that Google held through the Motorola Mobility International (MMI) acquisition.

Holding up the launch of a breakthrough device or technology because one holder of the 15-20 patents required is demanding outrageous terms, is, frankly, outrageous. But it happens a lot more than many in the technology community realize, and, if left unchecked, creates an atmosphere that stifles innovation (and potentially raises prices). With Motorola, Google acquired 24,000 current or pending patents, many of which are or will become essential to faster, higher resolution, more efficient devices. They also acquired Motorola's previous "hold up" practices.

The allegation that Google received a "hall pass" from the FTC related to patents is misleading. Without a doubt, Google will seek to incorporate as many of Motorola's patents into the standards setting process as possible (e.g., how set-top boxes connect to smartphones; how IP gateways connect to smartphones; network functionality including low-latency packet processing). When the process is unique and proprietary (e.g., search algorithms), they have and should exercise the right to enforce their intellectual property efforts. But that right cannot include the threat of injunction when the intellectual property is covered under a standard.

How Google chooses to display results from search queries also has come under attack. First, there is the long-standing argument that Google favors their own results over others even if those results do not yield better results. We documented an example of these tactics a little over two years ago when the net neutrality debate was raging – when an individual searched on "Net neutrality" or "Net neutrality legislation" blogs favorable to Google's position appeared on the first page. The allegation made by many (including The Sunday Brief) is that search engines should be unbiased.



The argument presupposes that Google can and should modify their business model from prioritized to random search results (or worse, to have an independent panel determine the algorithm). Taking that argument to the extreme, Amazon or Walmart.com would no longer have the ability to prioritize shopping search results by price. If the ability to process (hundreds of) thousands of results were not the issue, then perhaps accusers would have a point. But there is a scarcity of time for individuals to process the ever-growing Web. Someone has to make the call by what I mean when I type "Davidson College basketball." If I like Google's results on a consistent basis, I'll go with Google; if I like Yahoo's or Bing's results, I'll stick with them.

Secondly, there was the argument that Google was extracting results from certain sites (e.g., a restaurant review from Yelp) and including those in the search results. This prevented Internet users from visiting (and viewing more ads on) the Yelp.com site. Google reacted to this by a) purchasing Zagat; and also b) allowing any site to opt out of having their results displayed (called an "all or nothing" display result). Google agreed to continue this practice, although not under a consent decree.

Finally, the argument was made that Google hindered the passage of certain information through their Application Programming Interface that would result in better information for companies that run marketing campaigns over many search engines (e.g., a large movie promotion). Given that other search engines (and websites) had coalesced on standard information passage, it was going to be difficult for Google to defend their practice. They agreed to mirror common and accepted standards for the next five years. This was generally seen as an "easy give" on their part.

Google could have faced a worse outcome. It is no secret that while the relationship between Executive Chairman Eric Schmidt and President Barak Obama is close ([he was rumored to have been offered the position of Treasury Secretary](#)), the same love for Google is not shared by other parts of the White House (see today's article on [Schmidt's North Korea visit](#)) or Congress (especially related to [potential and realized privacy issues](#)). While Google is not fully out of the woods, they have overcome a huge hurdle with Thursday's announcement.

If you have friends who would like to be added to this email blog, please have them drop a quick note to sundaybrief@gmail.com and we'll add them to the following week's issue. Happy New Year from all of us here at the Sunday Brief!

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