

Mission Creep-y

Google Is Quietly Becoming One of the Nation's Most Powerful Political Forces
While Expanding Its Information-Collection Empire



Acknowledgments

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“Google policy is to get right up to the creepy line and not cross it... We don’t need you to type at all. We know where you are. We know where you’ve been. We can more or less know what you're thinking about.”¹

–*Google CEO (now Executive Chairman) Eric Schmidt (2010)*

...

“There [were] five exabytes of information created between the dawn of civilization through 2003. But that much information is now created every two days, and the pace is increasing... People aren’t ready for the technology revolution that’s going to happen to them.”²

– *Google CEO (now Executive Chairman) Eric Schmidt (2010)*

Introduction

Google may possess more information about more people than any entity in the history of the world. Its business model and its ability to execute it demonstrate that it will continue to collect personal information about the public at a galloping pace. Meanwhile Google is becoming the most prolific political spender among corporations in the United States, while providing less transparency about its activities than many other of its politically active peers. Despite its mantra – “Don’t be evil” – Google’s ever-growing power calls for keeping a close eye on the company, just as it is keeping a close eye on us.

Google is not just any company. Its ambitions go far beyond simply being the most widely used website and search engine in the world and being the industry leader in e-mail and mobile phone services. “Many of the other things that we do are also about taking research and bringing it to life in ways that we hope will change the world,” Google co-founder Sergey Brin has said.³

Google’s grand ambitions are evident in its pursuits of new business lines, most of which involve the collection of ever more information about the users of its products. In 2012 and 2013, Google spent more on new acquisitions – combined – than technology

¹ Derek Thompson, *Google’s CEO: “The Laws Are Written by Lobbyists,”* THE ATLANTIC (October 1, 2010), <http://theatlantic.com/1piWm1>.

² Nitasha Tiku, *Google’s CEO, Eric Schmidt, Finds You Woefully Unprepared for the Impending Revolution,* NEW YORK MAGAZINE (August 5, 2010), <http://nym.ag/125UjpL>.

³ Ryan Lawler, *Google Co-Founder Sergey Brin on Google X’s Translation of Research into New Businesses,* TECHCRUNCH (May 27, 2014), <http://tcrn.ch/1ntgpLM>.

peers Apple Inc., Microsoft Corp., Facebook Inc., Amazon Inc. and Yahoo! Inc.⁴ Its information collection empire now extends beyond its market-leading Internet searching, e-mail and smart phones to include devices in the streets and skies, on people's eyes and in their homes. Along with its adventurous corporate culture, Google's 52,000 employees and hundreds of billions of dollars of value allow it to explore ambitious new technological frontiers that are powerful enough to change society.⁵

As Google has continued to flourish, it has become ever bolder and more sophisticated in its methods to collect and combine information about individuals to generate revenue. Most Google users are likely aware that Google collects information about them, such as their Internet surfing practices. Few are likely aware of the extent or sophistication of the company's information-collection methods. Even privacy experts interviewed for this project said that they did not know the totality of information Google collects or how it uses it.

Google's qualms about peering into people's lives seem to have steadily diminished. The company was once reluctant, for instance, to combine information gleaned from an individual who used multiple Google services, such as its search functions and e-mail. This is no longer the case. Google's privacy policy now openly states that it may combine information on users of its various services. Meanwhile, Google's disclosures to the public about how it uses the information it collects tend to be imprecise and have sometimes occurred retroactively.

Google says there's nothing to worry about. "The reason that you should trust us is that if we were to violate that trust people would move immediately to someone else," Google Executive Chairman Eric Schmidt has said.⁶ But Google has at times committed major violations of the public's trust. For instance, Google has been caught secretly collecting information on millions of people – including many who may never have even used Google products – using its globetrotting Street View cars. It may soon begin providing information on non-Google users through its Skybox image-capturing satellites. It also gobbled up private information of students using its education apps without informing them. And in 2012, it paid the largest Federal Trade Commission (FTC) civil penalty ever to settle charges that it bypassed privacy protections on Apple's

⁴ Ari Levy and Brian Womack, *Google Outspends Top Five Rivals Combined in Deals Push*, BLOOMBERG (Jan 15, 2014), <http://bloom.bg/1m5fAp3>.

⁵ *Google*, YAHOO! FINANCE (Viewed on September 23, 2014), <http://yhoo.it/1B3Nlvy>.

⁶ Shane Richmond, *Google's Eric Schmidt: You Can Trust Us With Your Data*, THE TELEGRAPH (July 1, 2010), <http://bit.ly/1wy7TxD>.

Safari Internet browser, tracking users while giving them the impression that they were not being monitored.⁷

In some cases, the company permits users to opt out of having their personal information collected, such as the websites they've visited or the content of their e-mails. But even then, there are significant barriers to opting out. Users often must take affirmative steps to do so, and those steps are not readily apparent. In some cases the company has blocked tools that would afford users better privacy protections. For example, Google has hampered the distribution of mobile device applications ("apps") that would help users prevent their information from being collected.

With so much personal information collected in one place, Google has become a gold mine for intelligence agencies, such as the National Security Agency (NSA), to which Google has both wittingly and unwittingly provided huge amounts of information about Americans. Google is required to comply with most requests for information from intelligence agencies, so the more information it collects, the more information the government can access. Although Google claims that its information troves are primarily viewed only by computer systems, some employees do have access to private information, and at least one has used this information improperly. Hackers also target personal information contained on Google's servers.

Americans are actually more afraid of Google's data collection than that of the NSA, a recent survey found. In some respects, the difference between the data collection by Google and the NSA may not be functionally significant, as the NSA has found ways to access much of the information travelling to and from Google over the Internet.⁸

One might expect that a company like Google, which states an aspiration of organizing and providing easy access to the world's information, would demonstrate its principles by acting as an exemplar of transparency. But Google does not always apply this value to itself. Google's inconsistent views on transparency are evidenced in its refusal to disclose some important details of its rapidly growing expenditures aimed at influencing policy makers, and in its exertion of political influence through numerous third party organizations.

Among information technology companies, Google ranks about average in its disclosure of its political activities. Google Executive Chairman Eric Schmidt acknowledged in May 2014 that the company's shareholders would like to see more disclosure of its political

⁷ Press Release, FEDERAL TRADE COMMISSION, *Google Will Pay \$22.5 Million to Settle FTC Charges It Misrepresented Privacy Assurances to Users of Apple's Safari Internet Browser* (August 9, 2012), <http://1.usa.gov/19VRGcD>.

⁸ Chris Matyszczyk, *People Trust NSA More Than Google, Survey Says*, CNET (October 28, 2014), <http://cnet.co/1zfd8Vh>.

spending practices, and he promised to take some action in that regard. But Google has not announced any steps in the time since to improve disclosure, including on such things as the amounts that it gives to third-party groups that spend money to influence elections.

What we know from the aspects of Google's political spending that must be disclosed by law is that it is massive, and growing. Throughout much of its relatively brief existence, Google maintained a skeletal lobbying team in Washington, D.C. As recently as 2004, when Google was already a household name and commanded \$23 billion in an initial public offering, Google's lobbying expenditures totaled just \$180,000. That was minuscule compared to most major corporations.⁹

Over the first three quarters of 2014, Google ranked first among all corporations in lobbying spending in the United States. It trails some trade associations, which are traditionally the biggest lobbying spenders, but in 2014 it has spent \$1 million more on lobbying than PhRMA, the perennially powerful trade association of the pharmaceutical industry.¹⁰ Google is on pace to spend \$18.2 million in federal lobbying this year. It recently moved its influence operation into new Washington, D.C., offices as large as the White House.¹¹

Google has become a master of commissioning former government employees to do its bidding with lawmakers and regulators. Of 102 lobbyists the company has hired or retained so far in 2014, 81 previously held government jobs.¹² Meanwhile, a steady stream of Google's employees has been appointed to high-ranking government jobs, such as serving to as saviors of the bugled rollout of its health care exchange website. While these appointments may be attributed simply to the talents and abilities of the company's employees, they also are indicative of its growing influence and the friends it has in high places.

These federal lobbying expenditures and connections do not touch on Google's efforts to influence regulators in the states, where it has invested enormous sums to grease approvals on new technology initiatives such as its driverless car pursuits, and to stymie inquiries into whether its dominance in certain sectors is violating laws on competition.

⁹ Tom Hamburger and Matea Gold, *Google, Once Disdainful of Lobbying, Master of Washington Influence*, THE WASHINGTON POST (April 12, 2014), <http://wapo.st/1elXuhI>.

¹⁰ *Lobbying: Top Spenders*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org) (Viewed on October 31, 2014), <http://bit.ly/1zRx6X8>.

¹¹ Tom Hamburger and Matea Gold, *Google, Once Disdainful of Lobbying, Master of Washington Influence*, THE WASHINGTON POST (April 12, 2014), <http://wapo.st/1elXuhI>.

¹² *Lobbying: Lobbyists Representing Google Inc., 2014*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org) (Viewed on October 31, 2014), <http://bit.ly/1wO2W3s>.

Google did not even have a political action committee (PAC) when it went public in 2004. Now, its PAC is a goliath. In the 2014 election cycle, Google's PAC spent \$1.61 million (through Federal Election Commission reports of Nov. 5, 2014).¹³ That means it spent more on campaign contributions than Wall Street bank Goldman Sachs, which the Center for Responsive Politics ranks as the second biggest all-time "heavy hitter" among corporations for its use of money to influence policy and elections.¹⁴

Google began markedly increasing its engagement in politics in 2011, about the time that the Federal Trade Commission began investigating whether the company was engaging in anticompetitive trade practices. Observers attributed this burst of political engagement to a desire to quell the regulators.¹⁵

Google's influence may be most profound – and least quantifiable – in its use of its vast resources to accrue "soft power," such as funding those who might otherwise raise alarms about its practices. Google has disclosed that it contributes to about 140 trade associations and other non-profits, though it does not say how much, or for what purposes. Many of these are groups that lobby the government, spend money to influence elections, or both. Others are influential in civil society and devoted to myriad missions, including shaping technology and privacy policy, and pursuing political spending reforms, such as encouraging greater transparency.¹⁶ These funding practices by Google run the risk of silencing the watchdogs who might otherwise bark if Google goes too far.

Google's remarkable success is plainly due to the company's considerable competence and penchant for bold innovation. The popularity of its products owes to their excellence. Its search engine, for instance, was indispensable in gathering the information that formed the basis for this report. And one need look no further than the billions of searches it performs every day or the one billion Android phones it has sold to appreciate its global appeal.

However, the amount of information and influence that Google has amassed is now threatening to gain such a stranglehold on experts, regulators and lawmakers that it could leave the public powerless to act if it should decide that the company has become too pervasive, too omniscient and too powerful.

¹³ *Influence and Lobbying: PACs: Google Inc.*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org) (Viewed on November 5, 2014), <http://bit.ly/1zwisU5>.

¹⁴ *Influence and Lobbying: PACs: Google Inc. and Goldman Sachs*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org) (Viewed on November 5, 2014), [<http://bit.ly/1vIAOyt> (Google) and <http://bit.ly/10Pz3Ea> (Goldman Sachs) and *Heavy Hitters: Top All-Time Donors, 1989-2014*, CENTER FOR RESPONSIVE POLITICS (Viewed on Nov 5, 2014), <http://bit.ly/1mh7UBP>.

¹⁵ Tom Hamburger and Matea Gold, *Google, Once Disdainful of Lobbying, Master of Washington Influence*, THE WASHINGTON POST (April 12, 2014), <http://wapo.st/1eIXuHl>.

¹⁶ *U.S. Public Policy: Transparency*, GOOGLE (viewed on November 5, 2014), <http://bit.ly/1nsEwGq>.

I. Google's Roots

Google Inc. was started in 1996 by two Stanford computer science graduate students, Larry Page and Sergey Brin, as an experimental project called Backrub.¹⁷ They intended to count, qualify and map the Internet. They accomplished this by tracing the estimated 10 million documents then on the Web back to the links that brought people to them – and sorting those links by importance and popularity, based on how many sites linked to those sites.¹⁸

Page and Brin used this information to create a search engine to lead people to the information most relevant to their searches on the burgeoning Internet. Page and Brin's search engine used an algorithm called PageRank, which took into account both the number of pages linking to given sites and the number of sites that linked to them.¹⁹ They used this information to rank the relevance of each site on the Web. By using this newly invented site relevance ranking system, and searching page titles rather than keywords assigned to pages, this system provided more relevant search results than existing search engines like AltaVista and Excite.²⁰

In 1997, Page and Brin renamed the project "Google," based on "googol," the word for the numeral 1 followed by 100 zeroes.²¹ The name reflected the grand ambition of the company's founders, as Page explained at the company's first press event, "to organize the world's information, making it universally accessible and useful."²² Google was gathering so much information that it consumed nearly half of Stanford's entire network bandwidth, and, in the fall of 1996, would regularly bring down the university's Internet connection.²³

Google grew quickly. When it was formally founded as a business in 1998, it was handling 10,000 search queries per day.²⁴ It became a publicly traded company in 2004,

¹⁷ John Battelle, *The Birth of Google*, WIRED (August 2005), <http://wrd.cm/1Za3Np>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² STEVEN LEVY, *IN THE PLEX: HOW GOOGLE THINKS, WORKS, AND SHAPES OUR LIVES* 334 (1st ed., Simon & Schuster, April 2011).

²³ John Battelle, *The Birth of Google*, WIRED (August 2005), <http://wrd.cm/1Za3Np>.

²⁴ *Google Search Statistics*, INTERNET LIVE STATS (Viewed on September 24, 2014), <http://bit.ly/1rneFnz>.

at which point it was handling more than 200 million searches per day.²⁵ In 2012 to 2013 it was conducting an estimated 3.3 billion to 5.9 billion searches a day.²⁶

Worldwide, Google now handles two out of every three searches.²⁷ The search function often begins on Google's website and always brings users through Google's site, making it the most visited website in 62 countries, including the United States, Canada, Brazil, India, Australia and most of Western Europe. Google is the second most visited site (next to Facebook) in 36 other countries, and Google product YouTube is the second most visited site (also next to Facebook) in another 14 countries.²⁸ The Internet's dependence on Google is so great that a five-minute blackout of Google's website once caused global Internet traffic to plummet by 40 percent.²⁹

Google has been able to add to its domination of the Internet search market in part by offering two of the most popular Web browsers, the software that people use to surf the Internet. In just six years of operation, Google's Chrome browser (which is used on computers) and its browser for Android-based mobile phones have, together, surpassed all other browsers in total usage across computers and smart phones, capturing about a third of the market.³⁰ Because these browsers use Google as a home page, they drive traffic to Google's search pages, and therefore the advertisements that provide the bulk of its revenue.³¹

Meanwhile, popular browser competitors Safari (25 percent of the market) and Mozilla Firefox (8.7 percent) include embedded Google search boxes in their upper right corners, leading their users to use Google for searches, strengthening Google's grip on the market.³²

Since its beginnings as a search engine provider, Google has launched numerous other services, including the world's most popular e-mail service (Gmail), mapping services that provide directions and street-level views around the globe, and a mobile telephone

²⁵ *Id.*

²⁶ *Google Annual Search Statistics*, STATISTIC BRAIN (January 1, 2014), <http://bit.ly/1nmO4T8> and *Google search statistics*, INTERNET LIVE STATS (Viewed on September 24, 2014), <http://bit.ly/1rneFnz>.

²⁷ Matt McGee, *Bing Ends 2013 With All-Time High In US Market Share, But Google Also Up*, SEARCH ENGINE LAND, (Jan 15, 2014), <http://selnd.com/Lhg3GV>.

²⁸ Mark Graham and Stefano De Sabbata, *Internet Geographies*, THE OXFORD INTERNET INSTITUTE (2014), <http://bit.ly/1mo6C5i>.

²⁹ Lee Bell, *Google Goes Down For Five Minutes, Web Traffic Plunges 40 Percent*, THE INQUIRER (August 19, 2014), <http://bit.ly/1qnFCSK>.

³⁰ Rolfe Winkler, *Google Passes Microsoft in U.S. Browser Market Share*, THE WALL STREET JOURNAL (June 5, 2014), <http://on.wsj.com/1j7Zozn>.

³¹ *Id.*

³² *Id.* and *ADI Report: Google controls the browser worldwide*, ADOBE DIGITAL INDEX (viewed June 5, 2014), cmo.cm/1ogvkH8.

operating system it acquired (Android) that now controls more than half of the smart phone platform market.³³ Nine out of 10 smart phone users use Google apps or websites, and five out of the eight most used apps, or smart phone software programs, are Google products.³⁴

Google uses visitors to its search engine and other services to generate advertising revenue, and it has been extremely successful at doing so. Google's market capitalization of about \$378 billion (as of Oct. 31, 2014) ranks 46th on the Fortune 500, a jump from 55th in 2013.³⁵ It had revenue of almost \$68 billion over the 12 months ending in September 2014. Its 2013 profits were \$12.9 billion.³⁶ It has almost 52,000 full-time employees.³⁷

"Advertising is our principal source of revenue," Larry Page wrote in Google's 2004 "Letter from the Founders" in the company's first Securities and Exchange Commission (SEC) public filing statement, "and the ads we provide are relevant and useful rather than intrusive and annoying."³⁸ In its July 2014 earnings report, Google reported making 69 percent of its total revenue from ads on its own sites (such as Search, Gmail and YouTube.)³⁹

The more narrowly and accurately Google can target an ad to a user to match her interests, the more it can charge advertisers for each view or click. Total online ad revenues for all companies, worldwide, topped \$117 billion in 2013, and Google collected a third of that, accruing more than the rest of the top 10 companies in online ad revenue combined.⁴⁰ That dominance is a result of Google's knowledge of what we do online.

³³ *Comscore Reports January 2014 U.S. Smartphone Subscriber Market Share*, COMSCORE (March 7, 2014), <http://bit.ly/1BhiiN4>.

³⁴ *Id.*

³⁵ *Fortune 500: 46: Google*, FORTUNE (Viewed on October 31, 2014, last updated March 31, 2014), <http://bit.ly/1tXnBRs> and *Google Inc.: Key Statistics*, YAHOO! FINANCE (viewed on Oct. 31, 2014), <http://yhoo.it/108h7Uz>.

³⁶ *Investor Relations: 2014 Financial Tables*, GOOGLE (Viewed on September 26, 2014), <http://bit.ly/1upkim4>.

³⁷ *Google*, YAHOO! FINANCE (Viewed on September 23, 2014), <http://yhoo.it/1B3Nlvy>.

³⁸ Google Inc., *Form S-1 Registration Statement*, SECURITIES AND EXCHANGE COMMISSION (April 29, 2004), <http://1.usa.gov/1ri1B2W>.

³⁹ Ron Amadeo, *Google Beats Q2 2014 Revenue Estimates With \$15.96 Billion, Misses on EPS*, ARSTECHNICA (July 17, 2014), <http://bit.ly/1wKlsrN>.

⁴⁰ Zoe Fox, *Google Earns 33% of Online Ad Revenues*, MASHABLE (August 28, 2013), <http://on.mash.to/1BaT9ZM>.

“We now have a stalker economy, where customers become products.”⁴¹
– *Former Vice President and Google Senior Adviser Al Gore (2014)*

II. How Google Collects Information and Profits From It

Google’s business model primarily consists of offering popular, innovative information-based services on the Internet for which it largely does not charge users. In tandem with these services, it generates most of its revenue by selling advertisements on websites its users visit. It maximizes the effectiveness of its ads, and therefore its revenue, by collecting information about its users so that it can match ads to individual users’ interests and activities.

What follows is a review of the increasing variety of ways – some well-known, others less so – that Google collects information about users, online and offline.

Search and Ads

To find pages to include in search results, Google uses “software robots” to crawl the web, populating Google’s index of more than 100 million gigabytes of information, according to the company.⁴² The average search query travels 1,500 miles to find results, sometimes passing through multiple data centers.⁴³ Google’s algorithm uses more than 200 different variables to find and rank responses, though the company does not say what all of them are.⁴⁴

Besides its traditional technique of ranking sites by the number of other websites linking to a site, Google personalizes results based on information about users, sometimes taking advantage of information it has gleaned from its customers’ use of other services in Google’s growing constellation of information-based product lines. The company also uses, information based on what ads and content users view and interact with.⁴⁵

Google acknowledges that it collects personal information. “When you use our services or view content provided by Google, we may automatically collect and store information

⁴¹ Yasha Levine, *Al Gore Says Silicon Valley Is a “Stalker Economy,”* PANDODAILY (June 11, 2014), <http://bit.ly/1wU8w4H> and STEVEN LEVY, *IN THE PLEX: HOW GOOGLE THINKS, WORKS, AND SHAPES OUR LIVES* 177 (1st Edit., Simon & Schuster, April 2011).

⁴² *Split Second Search*, GOOGLE (Viewed on September 25, 2014), <http://bit.ly/1u2hdZb>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Privacy & Terms: Privacy Policy*, GOOGLE (Viewed on September 24, 2014), <http://bit.ly/1e3kr3y>.

in server logs,” Google writes in its Privacy Policy. “This may include: details of how you used our service, such as your search queries.”⁴⁶

The revenue-generating aspect of Google’s search function comes mainly from a program called AdWords. AdWords allows advertisers to vie to have their text, image, or video ads appear on Google search pages as well as on the web pages of numerous partner businesses, including those operated by AOL and *The New York Times*. AdWords’ algorithms choose where to place advertisements based on the subject of the ad and the text of the sites in its advertising network. For example, an ad for a digital camera can show up next to an article about digital cameras.⁴⁷ Google receives revenue when users click on the ads. More than a million advertisers compete for space on AdWords, and the ads it generates appear on more than 2 million websites, reaching 90 percent of Internet users worldwide.⁴⁸

One of the key ways in which Google keeps track of user interests is through the use of cookies, which are pieces of computer code that websites place in visitors’ browsers. Cookies enable Google to learn visitors’ browsing history, what YouTube videos a user watches, what a user searches for, how a user interacts with ads or search results, and more.⁴⁹ Google’s Privacy Policy says that among the information it “may automatically collect and store” are “cookies that may uniquely identify your browser or your Google account.”⁵⁰

The sophistication of Google’s use of cookies, and the level of information it collects about users, has increased significantly over time. In 2007, Google paid \$3.1 billion to purchase ad network DoubleClick, which was almost double the \$1.65 billion in stock it had paid for well-known video-sharing network YouTube the year before.⁵¹ DoubleClick’s cookies identify what ads users have viewed, and what websites they were on when viewing them. This contrasts with Google AdSense’s methodology of keeping track of which ads users had clicked on. Many privacy critics believe that

⁴⁶ *Privacy & Terms: Privacy Policy*, GOOGLE (Viewed on September 24, 2014), <http://bit.ly/1e3kr3y>.

⁴⁷ *The Difference Between AdWords and AdSense*, GOOGLE (Accessed on September 25, 2014), <http://bit.ly/1usIXrz> and *AdWords*, GOOGLE (Viewed on September 25, 2014), <http://bit.ly/1vkKUDf>.

⁴⁸ Rolfe Winkler and Greg Bensinger, *Amazon Prepares Online Advertising Program*, THE WALL STREET JOURNAL (August 22, 2014), <http://on.wsj.com/1v6ZqBw> and *About the Google Display Network*, GOOGLE (Viewed on October 22, 2014), <http://bit.ly/ZO49Lk>.

⁴⁹ *Types of Cookies Used by Google*, GOOGLE (Viewed on September 26, 2014), <http://bit.ly/1vnKxsD>.

⁵⁰ *Privacy & Terms: Privacy Policy*, GOOGLE (Viewed on September 24, 2014), <http://bit.ly/1e3kr3y>.

⁵¹ Louise Story and Miguel Helft, *Google Buys Doubleclick For \$3.1 Billion*, THE NEW YORK TIMES (April 14, 2007), <http://nyti.ms/1z18yK5>.

limiting information collection to ads clicked upon is less intrusive than monitoring the websites visited.⁵²

The hybrid cookie resulting from Google's acquisition of DoubleClick has been called the "Internet-tracking equivalent of the Hope Diamond: an omniscient cookie that no other company could match."⁵³ It "was so powerful that even within Google, the handling of the gem became somewhat contentious," wrote Steven Levy, a journalist who was allowed to report from inside Google's inner sanctum."⁵⁴

Before being acquired by Google, DoubleClick ads were found more on larger commercial websites, while AdSense ads were found on millions of smaller sites.⁵⁵ Since the DoubleClick acquisition, Google has had its eyes on users visiting sites big and small, collecting user information both from ads clicked upon and pages viewed.⁵⁶ The FTC investigated the purchase over eight months in 2007, approving it on a 4-1 vote.⁵⁷ The FTC did not deny that the acquisition could have an impact on consumer privacy, but said that such issues are "not unique to Google and DoubleClick," and they "extend to the entire online advertising marketplace." The FTC commissioners also wrote that "the sole purpose of federal antitrust review of mergers and acquisitions is to identify and remedy transactions that harm competition," and they said they could not block the transaction on any basis other than antitrust concerns.⁵⁸

The dissenting voter, Commissioner Pamela Jones Harbour, said that the deal "has greater potential to harm competition, and it also threatens privacy."⁵⁹ The Center for Digital Democracy, a nonprofit consumer advocacy group, said, "U.S. consumers will have to live under the shadow of an even bigger digital giant, with a privacy time bomb ticking in the background."⁶⁰

"Once they've identified you, they can track you on basically the entire web, even if you do not use Google tools," University of California, Berkeley, Professor Chris Hoofnagle

⁵² STEVEN LEVY, *IN THE PLEX: HOW GOOGLE THINKS, WORKS, AND SHAPES OUR LIVES* 334 (1st Edit., Simon & Schuster, April 2011).

⁵³ *Id.* at 333.

⁵⁴ *Id.*

⁵⁵ *Id.* at 334.

⁵⁶ *Id.* at 334-335.

⁵⁷ Press Release, FEDERAL TRADE COMMISSION, *Federal Trade Commission Closes Google/DoubleClick Investigation* (December 20, 2007), <http://1.usa.gov/1Djq6R8>.

⁵⁸ *Id.*

⁵⁹ Kevin Delaney and Charles Forelle, *FTC Clears Google to Buy DoubleClick*, *THE WALL STREET JOURNAL* (December 21, 2007), <http://on.wsj.com/1u3gZ4c>.

⁶⁰ *Id.*

told Public Citizen. “Google Analytics, DoubleClick, etc., are basically on all popular sites.”⁶¹

As Google has expanded its information-collecting services and technology, it has created ever bolder policies to ensure that it will gain possession of information about its users. Google has confirmed that it wants to link the tracking of smart phone and tablet browser activity – growing mediums through which people access the Internet – to mobile app use.⁶² But smart phone apps do not use traditional cookies.⁶³ As of August 1, 2014, anyone using Google’s online store to sell applications that operate on Google’s market-leading Android operating system must catalog customers with an Advertising ID, a unique number that corresponds to a particular customer.⁶⁴ The new Advertising ID then helps Google target users with ads in apps based on its tracking of their activity in Google Chrome, across mobile devices. It does allow users to opt out of “interest based ads.”⁶⁵

“The advertising industry wants to be able to deliver an ad to someone’s phone based on something you were looking at on your computer the day before,” said Chris Soghoian, a privacy expert at the American Civil Liberties Union’s Speech, Privacy and Technology Project. “The way they do that is by having this holistic profile of you.”⁶⁶

Not only does Google customize ads based on user profiles, but it apparently provides different search results to different users. The firm also appears to be customizing search results in a manner intended to increase its revenue.

In September 2012, the founder of Duck Duck Go Inc., a privacy-oriented search engine, asked 131 of its users to search Google for the same few keywords at the same time on the same day. The testers reportedly received widely varying results.⁶⁷

Another test, conducted by *The Wall Street Journal* in the heat of the 2012 presidential campaign, found that users got different search results for certain queries based on whether they had searched for President Obama or Republican nominee Mitt Romney.

⁶¹ Professor Chris Hoofnagle, e-mail interview with Public Citizen’s Sam Jewler (October 1, 2014).

⁶² Olga Kharif, *The Cookies You Can’t Crumble*, BLOOMBERG BUSINESSWEEK (August 21, 2014), <http://buswk.co/1qrIWCy>.

⁶³ Claire Cain Miller, *Google Is Exploring An Alternative To Cookies For Ad Tracking*, THE NEW YORK TIMES (September 19, 2014), <http://nyti.ms/1t5jHwB>.

⁶⁴ Olga Kharif, *The Cookies You Can’t Crumble*, BLOOMBERG BUSINESSWEEK (August 21, 2014), <http://buswk.co/1qrIWCy>.

⁶⁵ Greg Sterling, *Google Replacing “Android ID” With “Advertising ID” Similar To Apple’s IDFA*, MARKETING LAND (October 31, 2013), <http://mklnd.com/1m0d3zQ>.

⁶⁶ Christopher Soghoian, phone interview with Public Citizen’s Sam Jewler (September 30, 2014).

⁶⁷ Julia Angwin, *On Google, A Political Mystery That’s All Numbers*, THE WALL STREET JOURNAL (November 4, 2012), <http://on.wsj.com/1yR0koE>.

The Wall Street Journal found that most of those who searched for “Iran,” “Medicare” and “gay marriage” after searching for “Obama” received results for those terms that also related to “Obama.” The Obama results were accompanied by an explanation in grey type that “you recently searched for Obama.” Searches for “Iran,” “Medicare” and “gay marriage” after searches on “Romney” did not yield results related to Romney.⁶⁸ Google attributed the disparity to its overall data set connecting users’ interest in Obama with interest in Iran, Medicare and gay marriage, but not making the same connections for Romney.⁶⁹ This experiment provides a window into the level of influence Google has over how users view the Internet, and thus, the world.

Google’s prioritization of search results appears not always intended to improve service to users – instead, sometimes, to re-order results to artificially privilege its own products. Rivals such as Microsoft have complained that Google promoted its own services for videos, shopping, maps and more above those of competing companies.⁷⁰

Critics of Google Search methods observed in June 2014 that around the time Google upgraded its own shopping option, a rival to eBay, eBay results began to appear in Google Search results much less frequently.⁷¹ Similarly, after Google purchased smart thermostat company Nest, a rival home automation company called Vivint said it was delisted from Google Search results for four months, for reasons Vivint Vice President Jeremy Warren said were “vague” and non-transparent.⁷²

Just 16 days after Google announced its acquisition of Nest, Vivint was delisted for all but three of the 3,300 search terms that were linked to its website, according to an expert, which he said was unusually severe.⁷³ Vivint was apparently guilty of some prohibited practices, but an expert said that they did not seem to benefit the company, and other sites that have committed similar or worse transgressions have received lighter punishments, usually just ending up being bumped down the search results.⁷⁴

In 2011, rivals, such as Microsoft, accused Google of promoting its own services over those of competing companies prompting an FTC investigation.⁷⁵ Over the course of

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Charles Arthur, *Google Cleared of Search Results Bias After Two-Year US Investigation*, THE GUARDIAN (January 3, 2013), <http://bit.ly/ZCqGuy>.

⁷¹ James Robinson, *Ebay’s Search Results Mysteriously Take A Hit As Google Ramps Up Its Own Ecommerce Offerings*, PANDO (June 17, 2014), <http://bit.ly/1vTIIZO>.

⁷² James Robinson, *After Google Bought Nest, It Removed One of the Company’s Biggest Competitors From Search Results*, PANDODAILY (May 29, 2014), <http://bit.ly/1ppK2NS>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Charles Arthur, *Google Cleared of Search Results Bias after Two-Year US Investigation*, THE GUARDIAN (January 3, 2013), <http://bit.ly/ZCqGuy>.

nearly two years, the FTC “exhaustively investigated whether [Google] uses search bias” to push its own products higher and rivals’ lower in the search results, FTC director Jon Liebowitz said in January 2013.⁷⁶ The FTC did not deny that some kind of search bias was occurring. But it said that it could be justified as improving the search engine and would benefit competition and consumers.⁷⁷ The FTC concluded that “although some evidence suggested it was trying to remove competition, the primary reason was to improve the user experience.”⁷⁸

Google is also the subject of investigations into alleged anti-competitive practices in Europe, where it controls 90 percent of the search market, an even more dominant position than it enjoys in the United States.⁷⁹ The firm may be investigated for customizing its Android operating system to give preferential treatment to other Google products, as well as for “possible diversion of Internet traffic towards Google services which are not search services,” said European Commission Competition Commissioner Joaquin Almunia.⁸⁰ Experts take this to refer to Google’s alleged inflated positioning of YouTube and Google+ in search results. Almunia said that “there are more problems with Google than there were with Microsoft,” which has paid the European Commission 2.2 billion euros (about \$2.8 billion) in fines over anticompetitive practices, after a 16 year investigation.⁸¹ Almunia said that Google could be facing a fine of \$6 billion, representing 10 percent of its annual revenue.⁸²

Gmail and Other Cloud Services

In April 2004, Google launched Gmail, a free e-mail service that stores messages on Google’s computer servers, a system that is now commonly known as “cloud” computing. With a cloud system, one can execute programs and access data through the Internet to use information that is stored on remote computer servers instead of on the user’s own computer hard drive. When users are signed into Google cloud services and

⁷⁶ *Id.*

⁷⁷ Bryan Bishop, *FTC Reaches Settlement With Google, Bringing Antitrust Investigations to a Close*, THE VERGE (January 3, 2013), <http://bit.ly/1EUgv5c> and Carl Franzen, *FTC Chairman Defends Google Settlement: We Did What The Law Required*, TALKING POINTS MEMO (January 11, 2013), <http://bit.ly/1ycAWZn>.

⁷⁸ Charles Arthur, *Google Cleared of Search Results Bias After Two-Year US Investigation*, THE GUARDIAN (January 3, 2013), <http://bit.ly/ZCqGuy>.

⁷⁹ Charles Arthur, *Google May Face \$6bn EU Anti-Trust Fine*, THE GUARDIAN (September 23, 2014), <http://bit.ly/ZcmdPF>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

using Google's browsers on multiple devices, it is easier for Google to track them across devices.⁸³

Gmail was not the first such service, but it set itself apart from competitors by offering far more free storage space than existing services, such as Microsoft's Hotmail. While those services were offering a few megabytes of storage space, Google's one gigabyte offering was an order of magnitude greater. Gmail now offers 15 gigabytes, meaning that most users will never have to delete an e-mail.⁸⁴ Gmail dominates the global e-mail market, with at least 500 million users.⁸⁵ A February 2014 study of more than 6 billion marketing e-mails found that, of the major "free" e-mail services, Gmail has the greatest proportion of recently active users and the fastest growth in new subscribers.⁸⁶

Gmail gave Google a new source of ad-based revenue. From the time Gmail was launched on April 1, 2004, it was tracking the content of e-mail messages in order to deliver relevant ads to its users.⁸⁷ Marissa Mayer, product manager of Gmail during its development (and now CEO of Yahoo!), is said to have approved of content-based Gmail advertising after an ad for hiking boots appeared next to an e-mail thread about hiking plans on her computer.⁸⁸

Google also has developed ancillary cloud services – including Google Drive, a document storage and editing service, which operates off of the Gmail platform and stores information on Google's computers.

Combining User Information Collected by Different Products

When Google first began offering Gmail and other cloud services, it refrained from combining data on users across platforms. For example, browser history data was not combined with the contents of people's e-mail, search history or documents, even though Google had access to all of that content.⁸⁹ Only information derived from people's browsing behavior was used to target ads.⁹⁰ In 2008, an internal presentation

⁸³ Rolfe Winkler, *Google Passes Microsoft in U.S. Browser Market Share*, THE WALL STREET JOURNAL (June 5, 2014), <http://on.wsj.com/1j7Zozn>.

⁸⁴ *10 Gmail Innovations*, CNN (Viewed September 16, 2014), <http://cnn.it/1BJFt4C>.

⁸⁵ Adrian Covert, *Gmail At 10: How Google Dominated E-Mail*, CNN (April 1, 2014), <http://cnnmon.ie/1r8NpVC>

⁸⁶ *Yesmail Study: Gmail Has the Most Engaged and Fastest-Growing User Base*, YESMAIL (February 11, 2014), <http://bit.ly/1o140dm>.

⁸⁷ STEVEN LEVY, *IN THE PLEX: HOW GOOGLE THINKS, WORKS, AND SHAPES OUR LIVES* 170-172 (1st ed., Simon & Schuster, April 2011).

⁸⁸ *Id.* at 170-171.

⁸⁹ *Id.* at 335.

⁹⁰ *Id.* at 335-336.

about targeting ads based on people's searches was leaked. At the time, Google dismissed it as a speculative idea from a junior employee.⁹¹

But, apparently, it was more than just speculation. In 2011, Google launched its short-lived social networking service Buzz, and immediately came under intense criticism for ways in which it combined and released user information, seemingly against its own stated policies. When it launched Buzz, Google's privacy policy said, "When you sign up for a particular service that requires registration, we ask you to provide personal information. If we use this information in a manner different than the purpose for which it was collected, then we will ask for your consent prior to such use."⁹²

But the company appeared to violate this condition of its contract with the rollout of Buzz. In March 2011, the FTC released a complaint and announced a proposed consent order and settlement with Google, over claims the company had used deceptive practices and violated its own privacy promises.⁹³ Users who thought they were opting out of Buzz were having some of the information gleaned from their Google accounts displayed publicly, such as the e-mail addresses of their most frequent contacts. They could also still be "followed" by other Gmail users enrolled in Buzz.⁹⁴ The FTC alleged that even the users who opted into Buzz were not informed that information about their frequent contacts would be made public.⁹⁵

According to the FTC, this was the first time the agency had alleged violations of the substantive privacy requirements of the U.S.-European Union (EU) Safe Harbor Framework, which outlines how U.S. companies should transfer personal data from the European Union to the United States. It was also the first time an FTC settlement order had required a company to implement a comprehensive privacy program to protect consumers' information.⁹⁶ In October 2011, the FTC issued a final consent order barring Google from misrepresenting its privacy practices, requiring it to get users' affirmative consent before disclosing personal data and to implement for itself a comprehensive privacy program.⁹⁷

A few months later, in a January 2012 Google blog post, the company announced, "In short, we'll treat you as a single user *across all our products* [emphasis added], which

⁹¹ *Id.* at 336.

⁹² Press Release, FEDERAL TRADE COMMISSION, *FTC Charges Deceptive Privacy Practices in Google's Rollout of Its Buzz Social Network* (March 30, 2011), <http://1.usa.gov/LV6Ggk>.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Jon Leibowitz, Chairman, et al. *Decision and Order*, UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION (October 13, 2011), <http://1.usa.gov/1wcoe79>

will mean a simpler, more intuitive Google experience ... Our search box now gives you great answers not just from the Web, but your personal stuff too ... Our new Privacy Policy makes clear that, if you're signed in, we may combine information you've provided from one service with information from other services."⁹⁸

Google's Privacy Policy states that among the information it collects are "usage data and preferences, Gmail messages, G+ [Google's social network] profile, photos, videos, browsing history, map searches, docs, or other Google-hosted content."⁹⁹

After Google announced its new privacy policy, the Electronic Privacy Information Center (EPIC) filed a lawsuit calling for the FTC to enforce its 2011 consent order with Google that followed the Buzz controversy, and block this consolidation of user data. EPIC claimed that the combining of data would violate the consent order by comprising a misrepresentation of privacy policies, by failing to obtain affirmative consent from users before sharing their information with third parties, and by failing to comply with the requirements of the comprehensive privacy program.¹⁰⁰ But the Federal District Court of the District of Columbia ruled that it did not have the jurisdiction to compel the FTC to enforce the consent order.¹⁰¹ The court, though, acknowledged that EPIC had advanced "serious concerns" about Google's shift toward combining data.¹⁰²

Google's announcement that it had begun comingling information about consumers across Google platforms prompted a wave of class action lawsuits claiming computer fraud and wiretap law violations. Plaintiffs argued that Google's switch represented a significant breach in privacy by creating individual user profiles combining, for example, information from Internet searches with information from online chats. They criticized the lack of user consent in the comingling, and the absence of an easy, meaningful and universal opt-out option.¹⁰³ One complaint noted,

Similar cross-referencing of billions of consumers' personal information previously resulted in an October 13, 2011, Consent Order with the Federal Trade Commission ("FTC"), in which the FTC found that Google deceptively claimed it would seek the consent of consumers before using their information for a purpose other than for which it was collected, and that Google had misrepresented consumers' ability to exercise control over their

⁹⁸ *Updating Our Privacy Policies and Terms of Service*, GOOGLE (January 24, 2012), <http://bit.ly/Yl42Gs>.

⁹⁹ *Privacy & Terms: Privacy Policy*, GOOGLE (Viewed on October 24, 2014), <http://bit.ly/1rsXM6r>.

¹⁰⁰ *Electronic Privacy Information Center v. Federal Trade Commission, Complaint for Injunctive Relief*, United States District Court for the District of Columbia (February 8, 2012), <http://bit.ly/1BDRMO8>.

¹⁰¹ *Electronic Privacy Information Center v. Federal Trade Commission, Memorandum Opinion*, United States District Court for the District of Columbia (February 24, 2012), <http://bit.ly/1tjNXhV>.

¹⁰² *Id.*

¹⁰³ Reuben Kramer, *Classes across Country Suspect Google Is Evil*, COURTHOUSE NEWS SERVICE (March 26, 2012), <http://bit.ly/1ABGeeX>.

information. In announcing the Consent Order, Jon Leibowitz, Chairman of the FTC, stated, ‘when companies make privacy pledges, they need to honor them.’¹⁰⁴

Google continues to develop new ways to combine user information from different sources. In October 2013, Google began informing potential advertisers that it can track “cross-device conversions,” such as cases in which a person clicks on an ad on her phone and then later purchases the product on her computer. It cited a study finding that more than 90 percent of multi-device consumers move between several screens for regular purchases. When Google made this announcement, it included – among the conversions it could track – mobile-to-computer, tablet-to-computer, and computer-to-computer. It also said it would soon be able to track conversions involving store visits and phone calls.¹⁰⁵

In July 2014, the parties that had sued Google over its sudden comingling of information finalized a settlement after the 9th U.S. Circuit Court of Appeals refused to certify the class. Google then urged the judge to seal key documents from the public, despite requests for transparency from news agencies including Gannett, McClatchy and *The New York Times*.¹⁰⁶

Several privacy experts were interviewed for this report, and none could explain the full entirety of what Google knows about individual Internet users. John Simpson, consumer advocate and director of the Privacy Project at Consumer Watchdog, told Public Citizen:

If you never subscribe to one of Google’s services, and all you ever do is search, then it’s not entirely clear to me that they would be able to figure out your name and specific stuff about you. But they would be able to identify your IP address and that sort of thing, which most people would consider personally identifiable information. But if you do stuff while logged in, which they encourage you to do, then they know much more about you generally. And they’re able to put cookies down so the cookies save on your server, and they’re able to know things about you when you’re not logged in. But it’s not clear how much they know about everybody, and they’re not terribly forthcoming in that regard – that’s one of the biggest problems.¹⁰⁷

¹⁰⁴ *Ryan Hoey v. Google, Inc., Class action complaint 4*, The United States District Court for the Eastern District of Pennsylvania (March 26, 2012), <http://bit.ly/1qHdR8B>.

¹⁰⁵ Sridhar Ramaswamy, *Estimated Total Conversions: New Insights for the Multi-Screen World*, GOOGLE: INSIDE ADWORDS (October 1, 2013), <http://bit.ly/1kHwD1n>.

¹⁰⁶ *Google: No Need to See Secrets*, COURTHOUSE NEWS SERVICE (July 28, 2014), <http://bit.ly/1p0G5cY>.

¹⁰⁷ John Simpson, phone interview with Public Citizen’s Sam Jewler (October 3, 2014).

“The future isn’t about people finding things; it’s about things finding people.”¹⁰⁸

– *David Hirsch, former Google employee, and Songza investor, upon Google’s acquisition of Songza, a user data-driven online music service (July 2014)*

III. Google’s Expanding Empire of Information-Collecting Products and Services

Google has continued to pursue new business lines, most of which involve the collection of information, at a breakneck pace. In 2012 and 2013, Google spent \$17 billion on acquisitions, which was more than Apple Inc., Microsoft Corp., Facebook Inc., Amazon Inc. and Yahoo! Inc. combined.¹⁰⁹ The growing number of ways Google collects information includes an array of new product lines, such as Google Now, Emu, Hangouts, Wallet, Nest, Dropcam, Skybox, Google Glass and Chromebook

The following sections provide brief descriptions of the new services and products in Google’s growing empire.

Google Now

Google Now is an Android app that is at the forefront of predictive technology. It uses information Google gathers about users to act as a kind of personal assistant and provide users with reminders, updates, suggestions and more. More than any other Google service, it blends information from Google technologies, including voice search, Gmail, Google’s catalog of real-world entities, and data about the user’s interests, physical location.¹¹⁰ Hugo Barra, Android’s director of product management, said, “Google Now touches every back-end of Google.”¹¹¹

In March 2014, Google CEO Larry Page expressed some of the company’s ambitions for Google Now:

Computing is kind of a mess. Your computer doesn’t know where you are, it doesn’t know what you’re doing, it doesn’t know what you know – and a lot of what we’ve been trying to do recently is just make your devices work, make them understand your context. Google Now knows where you are, knows what you may need. So really having computing work and

¹⁰⁸ Steven Rosenbaum, *Songza’s ‘Human API’ Seals the Deal for Google Acquisition*, FORBES (July 6, 2014), <http://onforb.es/1qOysNc>.

¹⁰⁹ Ari Levy and Brian Womack, *Google Outspends Top Five Rivals Combined in Deals Push*, BLOOMBERG (January 15, 2014), <http://bloom.bg/1m5fAp3>.

¹¹⁰ Dieter Bohn, *Google Now: Behind the Predictive Future of Search*, THE VERGE (October 29, 2012), <http://bit.ly/1kMh8nn>.

¹¹¹ *Id.*

understand you, and understand that information – we really haven't done that yet. It's still very, very clunky.¹¹²

Examples of uses for Google Now include: reminders of meetings across town combined with an estimation of how long it will take to get there based on traffic patterns; if you might fall asleep on the subway train, having an alarm go off when you get to the right stop; and setting a reminder to pay back a friend, which goes off when you're near each other (assuming both of you have opted in to location sharing).¹¹³ One can set a reminder to pick up a grocery item and be reminded when walking near a Safeway.¹¹⁴ It can even use an accelerometer to guess when you've been driving, parked and gotten out of the car, then store in its memory and remind you of where you left your car.¹¹⁵ Google Now presents a prime example of how Google can combine information about users into one comprehensive profile.

Emu and Hangouts

In August 2014, Google acquired Emu, a messaging application that scans the contents of text messages and makes suggestions based on what the participants discuss – for example, displaying nearby restaurants if a user mentions lunch. Emu has thus far operated on venture funding, rather than advertising revenue, but some technology experts see the insertion of paid advertisements into chats – based on the contents of those chats – in its future.¹¹⁶ Experts predict that this technology will be applied to Gmail and Android's chat application (Hangouts), which would help Google capture, analyze, and perhaps advertise in the chats of at least the one billion people who use Androids.¹¹⁷

Google's policies for its chat program Hangouts, previously called "Talk," have moved toward bringing more people into Google's networks and collecting and analyzing more of their communications. Even before its acquisition of Emu, Google had taken steps to reduce the privacy of users and increase the amount of information it collects.

¹¹² Larry Page, interviewed by Charlie Rose. *Larry Page: Where's Google going Next?*, TED (March 2014), bit.ly/1DmnIdu.

¹¹³ Simon Hill, *How to Get the Best Out of Google Now*, DIGITAL TRENDS (July 28, 2014), <http://bit.ly/1pstShQ>.

¹¹⁴ Lauren Goode, *Ten Things You Didn't Know Google Now Could Do*, RE/CODE (August 4, 2014), <http://on.recode.net/1q0HiCn>.

¹¹⁵ *Id.*

¹¹⁶ Ryan Tate, *Why Google Just Bought a Company That Snoops on Your Chats*, WIRED (August 6, 2014), <http://wrd.cm/1lI5pS>.

¹¹⁷ Mark Sullivan, *Google's Emu Acquisition Could Put a Smart Assistant In Hangouts*, VENTUREBEAT (August 6, 2014), <http://bit.ly/Yl4i00> and Samuel Gibbs, *Gmail Android App Is First to Hit One Billion Installations*, THE GUARDIAN (May 16, 2014), <http://bit.ly/1gGfknx>.

Google replaced its previous chat platform, called “Talk,” with Hangouts in May 2013. In the transition to Hangouts, Google made it harder for users to disable all chat histories from being recorded by Gmail. It also removed the ability of people to chat with others using different instant message services than Hangouts, or hosting their own chat servers. Unlike before, people chatting through Google can now only chat with others if the others are chatting through Google, creating pressure for users of online chat programs to join the Google universe. Privacy experts say this is bad for users who want to be able to use chat programs that have better privacy protections and still be able to chat with others using Google’s chat services.¹¹⁸

Wallet

In May 2011, Google rolled out Google Wallet, a digital payment service. In May 2013, it created a function for users to easily send money over Gmail, and likely, soon, through other Google programs as well.¹¹⁹

Although Wallet is ostensibly a service intended to help people transfer money, observers have said that the real benefit for Google is to gain financial information about people.¹²⁰

Having access to users’ bank accounts could provide Google information on how wealthy its users are, possibly influencing what is advertised to them or even the costs at which products are offered, speculated Pulitzer Prize-winning investigative journalist Julia Angwin.

The more “information you give to the cellphone company or to Google, the more power they have over you,” said Angwin, author of “Dragnet Nation: A Quest for Privacy, Security, and Freedom in a World of Relentless Surveillance.”¹²¹ Angwin continued:

One thing that I had been investigating in my years at *The Wall Street Journal* was, there are a lot of companies that are trying to figure out ways to show different prices to people online based on the personal information they have about them. So, essentially, we’re going to get to a world where they’re going to know that I have five more dollars in my pocket than you, and my price is going to be \$5 higher, because that’s the data that they have. And so

¹¹⁸ Parker Higgins, *Google Abandons Open Standards for Instant Messaging*, ELECTRONIC FRONTIER FOUNDATION (May 22, 2013), <http://bit.ly/1tRghcq>.

¹¹⁹ Lily Hay Newman, *Google Wants to Control Your Wallet*, SLATE (March 28, 2014), <http://slate.me/Qo4CzI>.

¹²⁰ Mark Milian and Ari Levy, *Google Wallet Is Leaking Money*, BLOOMBERG BUSINESSWEEK (June 6, 2013), <http://buswk.co/Z2kvQ9>.

¹²¹ Julia Angwin interviewed by Amy Goodman and Nermeen Shaikh, *Dragnet Nation: Do Google, Facebook Know More Private Info Than NSA And Soviet-Era Secret Police?*, DEMOCRACY NOW! (April 2, 2014), <http://bit.ly/PjA80i>.

you lose in a negotiation, generally, when you have less information than the other person.¹²²

In 2010, if not before, Capital One Financial Corp., was using information from an online database of personal information to offer different credit cards to different online visitors.¹²³ Price discrimination is generally legal, as long as it's not based on "redlining" variables such as race, gender or geography.¹²⁴

Google Wallet has not been successful. In June 2013, a *Bloomberg* reporter wrote that Wallet was "leaking money."¹²⁵ Some experts have pinned Wallet's lack of success on wariness from banks about supporting Google Wallet under the conditions Google wants: that banks feed data back to Google on what users purchased, and other personal information.¹²⁶

The Google Wallet Privacy Policy says it may collect a variety of information including credit card number; date, time and amount of the transaction; the merchant's location; a description of the goods or services purchased; names and e-mail addresses of the buyer and seller; and more.¹²⁷ Meanwhile, Apple's rival program, Pay, says it will not store your credit card number or information on what you bought, where you bought it, or how much you paid.¹²⁸ All of Apple's information will be encrypted, which Wallet's privacy policy does not promise.¹²⁹

Nest and Dropcam

As it increasingly enters into the market of the so-called "Internet of Things" – networks of mutually compatible physical devices that communicate through the Internet and with each other – Google is acquiring technologies that can track our interests and activities outside of what we do on our computers.

In early 2014 Google acquired, for \$3.2 billion, home thermostat and fire alarm company Nest Labs. Nest then acquired home camera company Dropcam for \$555

¹²² *Id.*

¹²³ Emily Steel and Julia Angwin, *On the Web's Cutting Edge, Anonymity in Name Only*, THE WALL STREET JOURNAL (August 4, 2010), <http://on.wsj.com/1vPLoT8>.

¹²⁴ *Id.*

¹²⁵ Mark Milian and Ari Levy, *Google Wallet Is Leaking Money*, BLOOMBERG BUSINESSWEEK (June 6, 2013), <http://buswk.co/Z2kvQ9>.

¹²⁶ Tim Bjarin, *Why Google Wallet Has Been a Failure*, PC MAG (September 29, 2014), <http://bit.ly/1xDnOfn>.

¹²⁷ *Google Wallet Privacy Notice*, GOOGLE (May 7, 2014), <http://bit.ly/1woYqXZ>.

¹²⁸ Chloe Albanesius, *Use Apple Pay to Buy Things with Your Iphone*, PC MAG (September 9, 2014), <http://bit.ly/1nCGbhh>.

¹²⁹ *Id.*

million.¹³⁰ The two companies are considered leaders in the field of smart home devices. Dropcam is a cloud-based WiFi video monitoring service with live streaming, two-way talking, remote viewing, night vision, digital zoom, recording and more.¹³¹ Significantly, the Nest devices have been programmed with a highly flexible application programming interface (API), which is intended to allow connectivity with a wide range of unaffiliated smart home devices. Given Nest's prominence, its API could even become a de facto operating system for a very broad range of devices with which Nest could exchange information.¹³²

"Google needs to get into the physical space in order to collect more information about people," University of California at Berkeley Professor Chris Hoofnagle, told Public Citizen. "Nest and Dropcam, thus, are big deals. With these technologies they can get into the home."¹³³

Google's use of Nest information has expanded over time. When Nest announced its acquisition of Dropcam, it said that Nest and Dropcam data would not be shared "with anyone (including Google) without a customer's permission."¹³⁴ But Matt Rogers, a co-founder of Nest, predicted that Google will connect some of its apps to Nest, allowing Google to know when Nest users are at home.¹³⁵

Users could then set their thermostats with voice commands and have Google Now inform the Nest system when the user is returning home.¹³⁶ Google intends Nest to be the operating system for the "smart home," and says it will allow developers of appliances, light fixtures, garage door openers, and more, access to user information.¹³⁷ Each company linking to Nest, including Google, will have to write to users explaining what data they are using and why, according to Rogers.¹³⁸ Users will have the ability to

¹³⁰ Marco Chiappetta, *Google Nest Labs' Acquisition of Dropcam Scares the Heck Out Of Me*, FORBES (June 23, 2014), <http://onforb.es/1yQEYFk>.

¹³¹ Gordon Kelly, *Google CCTV With Night Vision? Dropcam Purchase Is a Privacy Nightmare*, FORBES (May 30, 2014), <http://onforb.es/1saLxly> and Marco Chiappetta, *Google Nest Labs' Acquisition of Dropcam Scares the Heck Out of Me*, FORBES (June 23, 2014), <http://onforb.es/1yQEYFk>.

¹³² Cade Metz, *Should We Trust Google With Our Smart Homes?*, WIRED (June 24, 2014), <http://wrd.cm/1iv6OSN>.

¹³³ Chris Hoofnagle, e-mail interview with Public Citizen's Sam Jewler (October 1, 2014).

¹³⁴ Aaron Tilley, *Nest Is Buying Dropcam to Get More Data on the Home*, FORBES (June 21, 2014), onforb.es/1sw8uzC.

¹³⁵ Rolfe Winkler and Alistair Barr, *Nest to Share User Information with Google for the First Time*, THE WALL STREET JOURNAL (June 24, 2014), <http://on.wsj.com/1u3n1lb>.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

un-link devices from Nest, though it's not clear how useful the product would be when unlinked.¹³⁹

Nest expects to make a lot of money from contracts with energy partners in which Nest provides aggregate energy usage data to utilities and adjusts home thermostats to balance the energy loads on the grids, adjusting based on supply and demand. Unused energy cannot be stored, so utilities are willing to pay Nest for energy usage information so that they can produce only as much energy as is needed to satisfy demand.¹⁴⁰

Though better energy efficiency is laudable, uses for these products could go further. According to a December 2013 filing by Google with the Securities and Exchange Commission, Google plans to derive meaningful amounts of revenue from putting ads "on refrigerators, car dashboards, thermostats, glasses, and watches, to name just a few possibilities."¹⁴¹ The only thermostat company Google is known to own at present is Nest.

The prospect of Google's usage of Dropcam raises the question of how it might use facial recognition technology. Google previously created, but withheld using, facial recognition technology. In 2009, Google engineers developed an app called Google Goggles, which could process a picture and return search results about the pictured object, including faces. Executives decided to nix the facial recognition feature, fearing it would be too controversial.

Now Google is using the technology in at least one tool, the Find my Face feature, which identifies people for tagging in Google+ pictures and videos.¹⁴² Dropcam has been developing people-detection software that was expected to be used starting in the summer of 2014.¹⁴³ Privacy critics say advancements like these will only add to

¹³⁹ *Id.*

¹⁴⁰ Matthew Mombrea, *Google's Real Plan Behind the Purchase of the Nest Thermostat*, IT WORLD (April 25, 2014), <http://bit.ly/1ijlSRo>.

¹⁴¹ Nick Bilton, *Google S.E.C. Filing Says It Wants Ads in Your Thermostat and Car*, THE NEW YORK TIMES (May 21, 2014), <http://nyti.ms/RXaujA>.

¹⁴² Bianca Bosker, *Facial Recognition: The One Technology Google Is Holding Back*, THE HUFFINGTON POST (June 1, 2011), <http://huff.to/1mH1W8r> and *How Google Uses Pattern Recognition to Make Sense of Images*, GOOGLE PRIVACY & TERMS, (Viewed July 31, 2014), <http://bit.ly/1uO4dFG> and STEVEN LEVY, IN THE PLEX: HOW GOOGLE THINKS, WORKS, AND SHAPES OUR LIVES 232 (1st ed., Simon & Schuster, April 2011).

¹⁴³ Editors, *Dropcam Adds Motion Sensors and People Detection to the Mix*, CNET (May 6, 2014), <http://cnet.co/1nzNnpj>.

Google's value as a "honey pot" of information for entities like the National Security Agency to try to access.¹⁴⁴

Skybox

In June 2014, Google acquired for \$500 million an aerospace surveillance company called Skybox Imaging, which uses satellites in low-earth orbit to provide high-resolution video and imagery of the earth. Skybox is taking imagery of the earth detailed enough that it's been able to help people predict the release of the next iPhone based on the number of trucks outside facilities owned by Foxconn Technology Group, which produces the phones, according to a Skybox co-founder.¹⁴⁵ It also monitors the production, transportation and available stock of resources like oil and grain around the world, highly valuable information for Wall Street commodity traders.¹⁴⁶

The kind of proprietary market data collected and sold by Skybox could have a huge impact on commodity trading activities, yet is not regulated or tracked by any federal agency.¹⁴⁷ It is not clear there are any other significant safeguards on how Google could use, or plans to use, this bird's eye view of the planet.

By 2018, the company plans to have a fleet of 24 satellites imaging the entire planet to the extent that it can capture real-time video of cars on a highway. A *Wall Street Journal* columnist speculated that it would allow Google and its users to look at essentially a constantly updating Google Maps, creating unprecedented birds-eye views of the planet.¹⁴⁸

"A potential downside to the Skybox acquisition is that it could represent a new level of privacy invasion for everyday people," wrote a columnist in *The Wall Street Journal*. "Google will be able to determine all sorts of things about us that might not have been discernible before. For example, is your home on a block with lots of trees? It turns out that correlates with household income. Or, how many cars do you own?"¹⁴⁹

¹⁴⁴ Cade Metz, *Should We Trust Google With Our Smart Homes?*, WIRED (June 24, 2014), <http://wrd.cm/1iv6OSN>.

¹⁴⁵ Christopher Mims, *Amid Stratospheric Valuations, Google Unearths a Deal with Skybox*, THE WALL STREET JOURNAL (June 15, 2014), <http://on.wsj.com/1ByNZn5>.

¹⁴⁶ *Id.*

¹⁴⁷ Press Release, PUBLIC CITIZEN, *Google's Purchase of Skybox Satellite Firm Highlights Increased Potential for Market Manipulation* (June 19, 2014), <http://bit.ly/1jfqbnd>.

¹⁴⁸ Christopher Mims, *Amid Stratospheric Valuations, Google Unearths a Deal with Skybox*, THE WALL STREET JOURNAL (June 15, 2014), <http://on.wsj.com/1ByNZn5>.

¹⁴⁹ *Id.*

A writer for Wired noted, “With Skybox’s satellites, Google may gain a window into your everyday life even if you don’t use Google at all.”¹⁵⁰ Skybox has previously put its imagery on a cloud for searching by companies, suggesting Google could similarly offer this wealth of information to the highest bidders.¹⁵¹

Google Glass

Google Glass is a computing device that is worn over users’ eyes like glasses. It has a camera, a microphone and a small display screen. It sees and can record whatever the wearer sees, and outside observers can have a difficult time telling when Glass is executing recording or other functions.

Google Glass has stimulated more controversy over privacy than perhaps any other recent Google development. The technology creates a strong potential for users to engage in actions that would dub them “Glassholes.”¹⁵² An April 2014 poll found 72 percent of Americans cited privacy concerns as their biggest reasons for not wanting to wear Glass. Respondents also expressed concerns about the possibility of hackers accessing personal data from Glass and revealing their personal information, including their whereabouts.¹⁵³

Another April 2014 study found that 53 percent of Americans think it would be a change for the worse if most people were to wear implants or other devices that constantly show them information about the world around them, as Glass can do. Perhaps in part because of the stigma around visible Google Glass sets, Google is securing patents for smart contact lenses featuring flexible electronics such as sensors and antennae.¹⁵⁴ Google’s current stated ambition is to create sensors for the eye that read chemicals in the user’s eye to warn them of low blood sugar levels. The company also filed a patent for a model with embedded cameras, which it says could be used to assist blind wearers. Cameras embedded in contact lenses could lead to the ability of people to covertly record and even zoom without those around them noticing.¹⁵⁵

¹⁵⁰ Marcus Wohlsen, *Google’s New All-Seeing Satellites Have Huge Potential – For Good and Evil*, WIRED (June 11, 2014), <http://wrd.cm/1od9BIQ>.

¹⁵¹ Brandon Bailey, *Google Buys Startup Satellite Maker Skybox Imaging for \$500 Million*, SAN JOSE MERCURY NEWS (June 10, 2014), <http://bit.ly/1pd8XPL>.

¹⁵² Matt Burns, *Google Explains How Not to be a Glasshole*, TECHCRUNCH (February 18, 2014), <http://tcrn.ch/1bKwh7r>.

¹⁵³ Melissa Hoffman, *72% Of Americans Won’t Wear Google Glass Because Of Privacy Worries*, ADWEEK (April 7, 2014), <http://bit.ly/1jn17Ve>.

¹⁵⁴ Lance Ulanoff, *Google Smart Contact Lenses Move Closer To Reality*, MASHABLE (April 21, 2014), <http://on.mash.to/1lwXHIP>.

¹⁵⁵ Kia Makarechi, *Move Over, Google Glass; Here Come Google Contact Lenses*, VANITY FAIR (April 22, 2014), <http://vnty.fr/1ln950L>.

Software programmers not tied to Google have developed some potentially alarming applications for Glass. In Dubai, police developed facial recognition software allowing officers to use Google Glass to recognize suspects from a database of wanted people.¹⁵⁶ A London firm created an app that allows Google Glass users to take pictures simply by thinking a picture-taking command. The company hopes to expand the functionality to allow users to do more complex commands through their brain waves.¹⁵⁷ If people or institutions besides the user were to attain access to this transfer of information between brainwave and Glass function, the implications could be alarming for people concerned with privacy or security.

Chromebook

Google's Chromebook is a stripped down laptop computer that sells for as little as \$199 and operates most of its programs through an Internet connection.¹⁵⁸ It uses software stored on Google's services to create documents and other data files that are stored on Google's cloud servers.

The Chromebook's reliance on the cloud means that a user who might normally do word processing and file storage on a hard drive-based program, in which the information does not leave the computer would instead do those things instead on cloud-based programs that store the information online. This would provide more user information – and more fodder for advertising – to Google.¹⁵⁹

The Chromebook is taking off in popularity. In the second quarter of 2014, alone, Google sold 1 million units to schools.¹⁶⁰ The Chromebook is now used by at least 22 percent of school districts in the United States.¹⁶¹ Between November 2013 and July 2014, Google captured 20 to 25 percent of the U.S. market for laptops costing less than \$300. Through the Chromebook, more users are running cloud-based programs than ever before, feeding more data back through the cloud to Google.¹⁶²

¹⁵⁶ William Maclean, *Dubai Detectives to Get Google Glass to Fight Crime*, REUTERS (October 2, 2014), <http://reut.rs/10mx1Ld>.

¹⁵⁷ Salvador Rodriguez, *London Firm Creates Mind-Controlled Commands for Google Glass*, LOS ANGELES TIMES (July 11, 2014), <http://lat.ms/1kMnLDz>.

¹⁵⁸ Brian Womack, *Google Chromebook under \$300 Defies PC Market With Growth*, BLOOMBERG (July 10, 2014), <http://bloom.bg/1FTr9JZ>.

¹⁵⁹ *Id.*

¹⁶⁰ David Andrade, *Bridgeport Public Schools Chooses Google for Education to Bring Affordable Technology to Their Students*, GOOGLE: OFFICIAL ENTERPRISE BLOG (July 18, 2014), <http://bit.ly/1q2E5G3>.

¹⁶¹ Benjamin Herold, *Google Under Fire for Data-Mining Student E-Mail Messages*, EDUCATION WEEK (March 13, 2014), <http://bit.ly/1o1bfDi>.

¹⁶² Brian Womack, *Google Chromebook under \$300 Defies PC Market with Growth*, BLOOMBERG (July 10, 2014), <http://bloom.bg/1FTr9JZ>.

“If you have something that you don't want anyone to know, maybe you shouldn't be doing it in the first place.”¹⁶³
— *Google Executive Chairman Eric Schmidt (2009)*

IV. Google Has Sought to Stifle the Public's Ability to Opt Out of Being Monitored

Since cookies were developed 20 years ago, developers have been creating ways for people to block them, particularly through manual and default settings on some of the most popular web browsers.¹⁶⁴ Google, however, is among a number of companies seeking to block defenses against cookies and other methods of information collection.

In August 2014, Google removed a privacy app called Disconnect Mobile from its Android Play store after just five days of availability, saying it violated a policy prohibiting software that interferes with other apps.¹⁶⁵ Disconnect aimed to stop apps from using ads to non-consensually collect data on the activities of smart phone users.¹⁶⁶ Privacy experts say the anti-interference rule Google cited is overly broad, allowing Google to be selective in its enforcement. Google does allow some apps in its store that interfere with third-party viruses. But it won't allow apps such as Disconnect or Adblock Plus, which it removed last year, that interfere with third-party data collectors. These protective apps shield users from cookies that may be used to spread malware or help the government spy on civilians. But, of concern to Google, they also hamper the collection of unsuspecting users' information for profit.¹⁶⁷

In February 2012, *The Wall Street Journal* revealed that Google had been exploiting a loophole and bypassing the default privacy settings of millions of people using Apple's Safari Web browser on their phones and computers. These are users who were told they would not be exposed to third-party cookies.¹⁶⁸ Safari automatically prevents the installation of cookies, so Google told users they did not have to opt out of Google tracking. However, a loophole in Safari allows advertisers to place cookies if the user interacts with the ad. Google put coding in some of its ads that tricked Safari into

¹⁶³ Richard Esguerra, *Google CEO Eric Schmidt Dismisses The Importance of Privacy*, ELECTRONIC FRONTIER FOUNDATION (December 10, 2009), <http://bit.ly/1nx96mQ>.

¹⁶⁴ Olga Kharif, *The Cookies You Can't Crumble*, BLOOMBERG BUSINESSWEEK (August 21, 2014), <http://buswk.co/1qrIWCy>.

¹⁶⁵ Jeremy Gillula and Cooper Quintin, *Blocking Consumer Choice: Google's Dangerous Ban of Privacy and Security App*, ELECTRONIC FRONTIER FOUNDATION (September 2, 2014), <http://bit.ly/W7dOdZ>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Julia Angwin and Jennifer Valentino-Devries, *Google's iPhone Tracking*, THE WALL STREET JOURNAL (February 17, 2012), <http://on.wsj.com/ZuiqRp>.

thinking the user was interacting with the ad. Under these conditions, Safari permits the placement of cookies. This allowed DoubleClick to place a cookie on the user's phone or computer, which then triggered an opening for more cookies to be installed.¹⁶⁹

After being contacted by *The Wall Street Journal*, Google disabled the coding that exploited this loophole.¹⁷⁰ The newspaper had found Google's coding on 22 of the 100 most-visited sites on the Safari computer browser and 23 of the top 100 sites on an Apple's iPhone browser.¹⁷¹

In 2012, Google paid a \$22.5 million settlement to the Federal Trade Commission– the largest civil penalty in FTC history – over these privacy violations over the course of 2011 and 2012. The commission said the violations had broken the terms of an earlier privacy settlement.¹⁷²

The following year, Google agreed to pay \$17 million to 37 states and the District of Columbia in another settlement over its circumventing of Safari's cookie protections. Google also agreed to stop using software code that would override cookie-blocking settings, to avoid misrepresenting information to consumers about how they use Google products, to maintain a web page for five years explaining what cookies are and how to control them, and to let the cookies tied to Safari browsers expire.¹⁷³

In these and the FTC settlements, Google denied any wrongdoing, a denial one FTC commissioner called “inexplicable.”¹⁷⁴ Google's attitude toward the company's intrusions on privacy has been mostly unapologetic. Google Executive Chairman Eric Schmidt has stated, “If you have something that you don't want anyone to know, maybe you shouldn't be doing it in the first place.”¹⁷⁵

But Schmidt has been inconsistent in applying that belief to himself. For example, author Stephen Levy reported in his book, “In the Plex: How Google Thinks, Works, and Shapes Our Lives” that Schmidt sought to rig Google's search engine not to display

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Claire Cain Miller, *Google to Pay \$17 Million To Settle Privacy Case*, THE NEW YORK TIMES (November 18, 2013), <http://nyti.ms/1hOVmNy>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Richard Esguerra, *Google CEO Eric Schmidt Dismisses the Importance of Privacy*, ELECTRONIC FRONTIER FOUNDATION (December 10, 2009), <http://bit.ly/1nx96mQ>.

information about one of his political donations. (A Google spokeswoman denied that this occurred.)¹⁷⁶

Schmidt also took umbrage at a news story by the technology news service CNET that reported on aspects of Schmidt's personal affairs that the reporter was able to obtain via Google searches:

... spending 30 minutes on the Google search engine lets one discover that Schmidt, 50, was worth an estimated \$1.5 billion last year. Earlier this year, he pulled in almost \$90 million from sales of Google stock and made at least another \$50 million selling shares in the past two months as the stock leaped to more than \$300 a share.

He and his wife Wendy live in the affluent town of Atherton, Calif., where, at a \$10,000-a-plate political fund-raiser five years ago, presidential candidate Al Gore and his wife Tipper danced as Elton John belted out "Bennie and the Jets."

Schmidt has also roamed the desert at the Burning Man art festival in Nevada, and is an avid amateur pilot.¹⁷⁷

These revelations might appear fairly benign for a public figure, especially one who owes his fame and wealth to helping create the system the CNET reporter used to research her story. But Google apparently thought otherwise. Google retaliated to CNET's story, headlined, "Google Balances Privacy, Reach," by instituting a policy that it would not talk to CNET reporters for one year.¹⁷⁸

¹⁷⁶ STEVEN LEVY, *IN THE PLEX: HOW GOOGLE THINKS, WORKS, AND SHAPES OUR LIVES* 333 (1st ed., Simon & Schuster, April 2011) and Claire Cain Miller, *New Book on Google Shows Gaffes in China*, THE NEW YORK TIMES (March 31, 2011), <http://nyti.ms/1E6e2kK>.

¹⁷⁷ Elinor Mills, *Google Balances Privacy, Reach*, CNET (July 14, 2005), <http://cnet.co/1suT1wW>.

¹⁷⁸ Jennifer Westhoven, *CNET: We've Been Blackballed by Google; Tech News Site Says Google Froze out Its Reporters for Publishing Eric Schmidt's Personal Info*, CNN (Aug, 5, 2005), <http://cnnmon.ie/1vls5yn>.

“It is possible that this has been the largest privacy breach in history across Western democracies.”¹⁷⁹
— *Stephen Conroy, Australia's Minister for Broadband, Communications and the Digital Economy on Google's data collection on Street View project (2010)*

V. Examples of Google Violating the Public Trust

Aside from the known ways in which Google collects information, a number of less well publicized, and sometimes apparently illegal, collection methods have come to light. This section highlights three main examples of dishonest information collection by Google that it later rolled back after being publicly criticized or confronted with legal actions.

Google Used Apps for Education to Collect Information on Unwitting Students

In response to a lawsuit over federal and California wiretap and privacy laws, Google in March 2014 acknowledged scanning and indexing the contents of e-mails belonging to the 30 million student users of its “Apps for Education” suite. The app, which provides cloud-based e-mail, calendar, information storage, word-processing, spreadsheet and other services, is provided without charge to thousands of K-12 schools, colleges and universities.¹⁸⁰

Education Week reported, “A Google spokeswoman confirmed to *Education Week* that the company “scans and indexes” the e-mails of all Apps for Education users for a variety of purposes, including potential advertising, via automated processes that cannot be turned off – even for Apps for Education customers who elect not to receive ads.”¹⁸¹

The nine plaintiffs in the lawsuit said they did not consent to such monitoring, and the two student plaintiffs say that they were required to use Gmail accounts due to their institutions’ subscriptions to Google Apps for Education.¹⁸² A lawyer representing Google argued that the company’s practice of data mining is so widely known that the plaintiff complaints of secret scanning are invalid. It would not say if the e-mail scans are used to build profiles of students, but said that the scans are not used to target ads

¹⁷⁹ Chris Matyszczyk, *Australia Official: Google Deliberately Took Wi-Fi Data*, CNET (May 25, 2010), <http://cnet.co/1sNcZUU>.

¹⁸⁰ Benjamin Herold, *Google Under Fire for Data-Mining Student E-Mail Messages*, EDUCATION WEEK (March 13, 2014), <http://bit.ly/1o1bfdi>.

¹⁸¹ *Id.*

¹⁸² *Id.*

to users unless they choose to receive them.¹⁸³ But in a formal declaration submitted by Google's lawyers, Google wrote:

The University of Alaska ("UA") has a "Google Mail FAQs," which asks, "I hear that Google reads my e-mail. Is this true?" The answer states, "They do not 'read' your e-mail *per se*. For use in targeted advertising on their other sites, if your e-mail is not encrypted, software (not a person) does scan your e-mail and compile keywords for advertising. For example, if the software looks at 100 e-mails and identifies the word 'Doritos' or 'camping' 50 times, they will use that data for advertising on their other sites."¹⁸⁴

At least one school district says it has an agreement with Google to use its service without the company using student data to serve ads. . Other districts say they declined to adopt Google Apps for Education over concerns with how Google would handle the personal information.¹⁸⁵

In February 2014 the U.S. Department of Education issued new guidance on how to interpret the Family Educational Rights and Privacy Act (FERPA), under which Google was sued, seemingly calling for an end to Google's use of Apps for Education. It read in part,

Under FERPA, the provider may not use data about individual student preferences gleaned from scanning student content to target ads to individual students for clothing or toys, because using the data for these purposes was not authorized by the district and does not constitute a legitimate educational interest as specified in the district's annual notification of FERPA rights.¹⁸⁶

Two months later, Google announced it would cease the scanning of student e-mails and the displaying of advertisements to students in Apps for Education, though it had previously claimed that the scanning could not be turned off. This came as Google competitor Bing, Microsoft's search engine, heavily promoted its ad-free services to classrooms.¹⁸⁷ Social media lawyer Bradley Shear, who had initially called attention to Google's possible FERPA violation, wrote that it was a good first step, but:

Will Google also turn off its scanning and behavioral advertising functions for its other services such as YouTube, Google Plus, etc. ... in a school setting? Will Google also change its Android and Chromebook policies to better protect student privacy? Will Google change its Terms of Service and Privacy Policies that govern all of its education offerings? Will Google revise all of its

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Alex Hern, *Google Stops Scanning Student E-Mails After California Lawsuit*, THE GUARDIAN (May 1, 2014), <http://bit.ly/1kA7q73>.

school contracts to reflect this announcement? Will Google delete all of the personal and highly monetizable personal information that it has been collecting on students, parents, teachers, and their families? Since Google has been caught misrepresenting its practices once again should we as President [Reagan] said when describing the Soviet Union trust but verify? Who will do the verifying?¹⁸⁸

Google is expanding its presence in schools, where it can get early access to impressionable young consumers. In August 2014, it released its new Classroom tool for Apps for Education users, creating a system for teachers to use Google Docs and Drive to organize, send and receive assignments. The tool is available in 42 languages. Students can use their Google Chromebook laptops to do research with Google apps, write their assignments in Google Docs and submit them through Classroom.¹⁸⁹ Discussing third party developers that Google is in talks with, Classroom creator and Google product manager Zach Yeskel said, “Classroom is just the beginning of what we hope to do.”¹⁹⁰

Google Conducted Secret Mass Surveillance Under the Guise of Street View Project

In 2007, Google began its Street View project, in which it sent drivers along the world’s thoroughfares in cars equipped with cameras. Privacy advocates expressed concern over its photographic documentation of streets, homes, people, parks and other outdoor spaces around the world being posted online for all to see. Street View cars logged more than 5 million miles in more than 50 countries.¹⁹¹ News soon emerged that the Google Street View cars presented a previously unknown privacy concern as well: the secret collection of huge amounts of personal information from millions of unencrypted wireless networks, including e-mails, medical and financial records, passwords and more.¹⁹²

Only after independent investigations did Google confess in 2010 to collecting information including Wi-Fi transmission data, with e-mail passwords and e-mail content, MAC addresses (the unique device ID for Wi-Fi hotspots), network SSIDS (the

¹⁸⁸ Bradley Shear, *Google to Stop Scanning Student E-Mails, but Troubling Privacy Policies Continue*, SHEAR ON SOCIAL MEDIA LAW, (April 30, 2014), <http://bit.ly/1tpd5BQ>.

¹⁸⁹ Frederic Lardinois, *Google Opens Classroom, Its Learning Management Tool, to All Teachers*, TECHCRUNCH (August 12, 2014), <http://tcrn.ch/1l0hBpt>.

¹⁹⁰ Issie Lapowsky, *Google Wants to Save Our Schools – and Hook a New Generation of Users*, WIRED (August 13, 2014), <http://wrd.cm/1oVujWe>.

¹⁹¹ *Google: Street View*, GOOGLE (Viewed on August 27, 2014), <http://bit.ly/1kG6nnl>.

¹⁹² David Streitfeld, *Google Concedes That Drive-By Prying Violated Privacy*, THE NEW YORK TIMES (March 12, 2013), <http://nyti.ms/1nM3v6Z>.

user-assigned network ID name) tied to location information for private wireless networks, and more.¹⁹³

The Federal Communications Commission (FCC) was among the entities that investigated. Google initially denied any data had been collected from unsuspecting people, then tried to play down what had happened. It also withheld information from regulators, and in at least one case falsely promised that data would be destroyed.¹⁹⁴ Google said the data collection was legal, but then refused to share the collected information with regulators, saying that doing so might break privacy and wiretapping laws.¹⁹⁵ The company at first blamed a lone engineer for the operation, but the FCC found that the “lone engineer” had worked with others and tried to tell superiors what he was doing.¹⁹⁶ The commission said Google obstructed the investigation – though had not broken any laws – and fined it \$25,000.¹⁹⁷

Governments around the world brought actions against Google. Richard Blumenthal Connecticut’s attorney general at the time (and now U.S. senator) helped organize a multi-state coalition to investigate what he called “Google’s deeply disturbing invasion of personal privacy.”¹⁹⁸ A coalition of 38 American states settled for a fine of \$7 million. That represented less than a quarter of what Google was earning per day at the time, but the settlement did impose requirements for Google to implement and publicize new security protocols among employees and users.¹⁹⁹

Authorities in France, South Korea, New Zealand, the United Kingdom, Canada and Spain found that Google’s Wi-Fi interception violated applicable data protection laws. The privacy commissioner of Canada found that Google had violated privacy laws by secretly intercepting “full names, telephone numbers, and addresses of many Canadians ... complete e-mail messages, along with e-mail headers, IP addresses, machine hostnames, and the contents of cookies, instant messages and chat sessions.”²⁰⁰ An Australian regulator, Stephen Conroy, said, “It is possible that this has been the largest

¹⁹³ *Investigations of Google Street View*, ELECTRONIC PRIVACY INFORMATION CENTER (last updated 2012), <http://epic.org/privacy/streetview/>.

¹⁹⁴ *Id.*

¹⁹⁵ David Streitfeld, *Data Harvesting at Google Not a Rogue Act, Report Finds*, THE NEW YORK TIMES (April 28, 2012), <http://nyti.ms/1r7IgN>.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ David Streitfeld, *Google Concedes That Drive-By Prying Violated Privacy*, THE NEW YORK TIMES (March 12, 2013), <http://nyti.ms/1nM3v6Z>.

¹⁹⁹ *Id.*

²⁰⁰ *FCC Investigation of Google Street View*, ELECTRONIC PRIVACY INFORMATION CENTER (Viewed on October 30, 2014), <http://bit.ly/1xFXIKH>.

privacy breach in history across Western democracies.”²⁰¹ The French data protection authorities gave Google the highest fine it had ever levied, 100,000 euros, for the violations, including for “the economic advantages Google gained.”²⁰²

A German privacy regulator fined Google 145,000 euros, close to their legal limit, which amounted to about 0.002 percent of Google’s \$10.7 billion in net profit that year. The regulator, Johannes Caspar, said, “As long as violations of data protection law are penalized with such insignificant sums, the ability of existing laws to protect personal privacy in the digital world, with its high potential for abuse, is barely possible.”²⁰³

“Germany has the strongest data protection laws in Europe, and this is all they could do?” asked Anna Fielder, a trustee at Privacy International, a data protection group. “Most businesses are not complying with data protection laws because the costs of noncompliance – I mean these tiny penalties – are so low.”²⁰⁴

Google Spokeswoman Niki Fenwick said, “We work hard to get privacy right at Google, but in this case we didn’t, which is why we quickly tightened up our systems to address the issue.”²⁰⁵

Once the surveillance was uncovered, Google said it purged the data, but it turned out that not all of the data was destroyed.²⁰⁶ But, 19 months after the UK ordered Google to erase the information it had secretly collected, which could have included the e-mails and passwords of millions of Britons, the company acknowledged it still had not done so.²⁰⁷

In March 2014, Google asked the U.S. Supreme Court to decide whether the Street View data gathering was legal, arguing that it was more like using radio to catch broadcasts than wiretapping, and that the information it collected was not password-protected and was available to the public.²⁰⁸ Earlier, the U.S. Court of Appeals for the 9th Circuit had ruled that the program violated the Wiretap Act, which protects public electronic

²⁰¹ Chris Matyszczyk *Australia Official: Google Deliberately Took Wi-Fi Data*, CNET (May 25, 2010), <http://cnet.co/1sNcZUU>.

²⁰² *FCC Investigation of Google Street View*, ELECTRONIC PRIVACY INFORMATION CENTER (last updated 2012), <http://bit.ly/1xFXlKH>.

²⁰³ Kevin J. O’Brien, *Germany Fines Google Over Data Collection*, THE NEW YORK TIMES (April 22, 2013), <http://nyti.ms/1Acp4sd>.

²⁰⁴ *Id.*

²⁰⁵ David Streitfeld, *Google Concedes that Drive-By Prying Violated Privacy*, THE NEW YORK TIMES (March 12, 2013), <http://nyti.ms/1nM3v6Z>.

²⁰⁶ *Id.*

²⁰⁷ Josh Halliday, *Google Faces New Street View Data Controversy*, THE GUARDIAN (July 27, 2012), <http://bit.ly/1sqP9eN>.

²⁰⁸ Lauren C. Williams, *Google Wants The Supreme Court to Legalize Collecting Private Data Through Open Wi-Fi Networks*, THINKPROGRESS (April 3, 2014), <http://bit.ly/YOHttU>.

communications from being intercepted or stored. It said the information collection requires enough difficulty and technical sophistication that it does not compare to picking up radio broadcasts.²⁰⁹ In June 2014, the U.S. Supreme Court agreed with the court of appeals and denied Google's appeal.²¹⁰

Google 'Buzz' Publishes User Information Without First Informing Users

In 2010, Google launched, and immediately began receiving criticism for Google Buzz, a social networking service that publicly displayed information from Gmail accounts that many users considered private, or at least likely did not expect to have shared publicly online. This information included, for example, all the e-mail and chat contacts a Gmail user had ever interacted with.²¹¹ One woman wrote a blog post criticizing Google for making publicly available to her abusive ex-husband, among others, her comments on Reader items, as well as her location and workplace information.²¹² A journalist noted that the publication of users' contacts could be especially dangerous for people in his profession, who often rely on anonymous sourcing and private communication.²¹³

After facing a class action lawsuit and a major complaint to the Federal Trade Commission, and making some tweaks to the program that failed to fully address consumer concerns, Google finally discontinued Buzz in 2011.²¹⁴ As part of its settlement with the FTC, Google agreed to be audited by the agency for 20 years.²¹⁵ After shutting Buzz down, Google announced to users that public Buzz posts not deleted by users "may appear in search results and on your Google Profile."²¹⁶

²⁰⁹ *Id.*

²¹⁰ *Ben Joffe v. Google*, EPIC (Viewed on October 1, 2014). <http://bit.ly/ZsBRXh>.

²¹¹ Ben Branstetter, *Why Won't Google+ Die?*, THE DAILY DOT (November 27, 2013), <http://bit.ly/1rWMOET>.

²¹² Robin Wauters, *Google Buzz Privacy Issues Have Real Life Implications*, TECHCRUNCH (February 12, 2010). <http://tcrn.ch/1qcxRT4>.

²¹³ Nicholas Carlson, *WARNING: Google Buzz Has a Huge Privacy Flaw*, BUSINESS INSIDER (February 10, 2010), <http://read.bi/YZ1778>.

²¹⁴ Brennon Slattery, *Google Hit With Lawsuit Over Google Buzz*, PCWORLD (February 18, 2010), <http://bit.ly/1dkHTw5> and Drew Olanoff, *Reminder: Google Buzz Is Still Dead, Your Data Will Be Moved to Drive, and They Thank You For Using It*, TECHCRUNCH (May 25, 2013), <http://tcrn.ch/Xw6JEL>.

²¹⁵ David Streitfeld, *Google Concedes that Drive-By Prying Violated Privacy*, THE NEW YORK TIMES (March 12, 2013), <http://nyti.ms/1nM3v6Z>.

²¹⁶ Drew Olanoff, *Reminder: Google Buzz Is Still Dead, Your Data Will Be Moved to Drive, and They Thank You for Using It*, TECHCRUNCH (May 25, 2013), <http://tcrn.ch/Xw6JEL>.

“Technological progress poses a threat to privacy by enabling an extent of surveillance that in earlier times would have been prohibitively expensive.”²¹⁷
 – *US v. Garcia*, 7th Circuit Court of Appeals (2007)

• • •

“Electronic surveillance for law enforcement and intelligence purposes depends in great part on the cooperation of the private companies that operate the nation’s telecommunication system.”²¹⁸
 – *U.S. Senate Select Committee on Intelligence* (2007)

VI. Google’s Information Collection Activities Create Risks of Information Falling Into Unintended Hands

Google purports to take many steps to prevent the personal information it collects from ending up in unintended places. For instance, it touts various technological security measures it takes and says that it restricts “access to personal information to Google employees, contractors and agents who need to know that information ... and who are subject to strict contractual confidentiality obligations and may be disciplined or terminated if they fail to meet these obligations.”²¹⁹ But information Google collects and retains has been obtained by law enforcement and inappropriately used by its employees, as well as being obtained by hackers.

Google Has Acted as a Witting and Unwitting Informant to the Federal Government

Telecommunications companies are required by law to provide user data to the government when presented with a legitimate subpoena, court order or other formal request. Among companies that collect user information, Google is one of the more transparent about its policies, in that it provides reports of how many government requests it receives. But the huge amount of information collected by Google means that it has a lot to give to the government when the government comes calling.

“As long as Google is operating its current business model and runs [it] out of the U.S. jurisdiction,” said Wikileaks founder Julian Assange, “it cannot protect people from the

²¹⁷ Charlie Savage, *Judges Divided Over Rising GPS Surveillance*, THE NEW YORK TIMES (Aug. 13, 2010), <http://nyti.ms/13lpAp6>.

²¹⁸ FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978, AMENDMENTS OF 1978, SENATE SELECT COMMITTEE ON INTELLIGENCE (Oct. 27, 2007), <http://1.usa.gov/13loWbi>.

²¹⁹ *Google Privacy & Terms*, GOOGLE (viewed on Oct. 16, 2014), <http://bit.ly/1od31fZ>.

National Security Agency or the FBI [Federal Bureau of Investigation], or other arms of the U.S. government.”²²⁰

The U.S. government makes more requests than any other government, accounting for 40 percent of the 32,000 requests to Google made by governments around the world in the first six months of 2014.²²¹ U.S. government requests were up 19 percent from the previous six month period, and up 250 percent since the company started publishing figures in 2009, a September 2014 Google Transparency Report indicated.²²² Google complied at least in part with 84 percent of U.S. requests, and with 65 percent of requests worldwide.²²³

These self-reported figures cover subpoenas, search warrants and court orders. They do not, however, include requests made via FBI National Security Letters (NSLs) or Foreign Intelligence Surveillance Act (FISA) requests.²²⁴ Google disclosed receiving between 15,000 and 15,999 FISA “content requests” in the second half of 2013, the most recent period it’s allowed to disclose, and between zero and 999 “National Security Letters” in the first half of 2014.²²⁵ Content requests, as the name suggests, refer to requests for some content, such as an uploaded photo, in the account, but do not cover requests for user names.²²⁶ National Security Letters, or NSLs, refer to demands from the Federal Bureau of Investigation to businesses to hand over specific information that the FBI has determined to be relevant to counterterrorism efforts.²²⁷

Most of law enforcement needs a warrant to look through someone’s e-mail, but there are no legal restrictions on the same activity being done by companies like Google that host e-mail services and data servers.²²⁸ The U.S. Supreme Court banned warrantless searches of smart phones directly by law enforcement, but there may be a loophole if

²²⁰ Ryan Grim and Sarah Harvard, *Julian Assange Fires Back at Eric Schmidt and Google’s “Digital Colonialism”*, HUFFINGTON POST (September 30, 2014), <http://huff.to/1yy0NvP>.

²²¹ Conor Dougherty, *Google Report Shows Governments’ Increasing Demands for Users’ Data*, THE NEW YORK TIMES (September 15, 2014), <http://nyti.ms/10f3tzF>.

²²² Emma Woollacott, *Google Piles Pressure on Congress with Latest Transparency Report*, FORBES (September 16, 2014), <http://onforb.es/1yhrq8j>.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Transparency Report*, GOOGLE (Viewed on October 20, 2014), <http://bit.ly/1FsGL6V>.

²²⁶ Brian Feldman, *Tech Companies Begin to Disclose User Names*, THE WIRE (NEWS FROM THE ATLANTIC), Feb. 4, 2014, <http://bit.ly/1s0ZX2k>.

²²⁷ Alex Abdo, *Google’s Report on NSLs: What We Still Don’t Know*, AMERICAN CIVIL LIBERTIES UNION (March 7, 2013), <http://bit.ly/1tIKbNT>.

²²⁸ Russell Brandom, *Microsoft Just Exposed Email’s Ugliest Secret*, THE VERGE (March 21, 2014), <http://bit.ly/1laEKEd>.

the same information can be – or must be – legally provided to law enforcement indirectly through Google.²²⁹

Google has given law enforcement agencies information that aided criminal investigations of at least one person engaged in the pursuit of journalism. In 2010 the FBI obtained a sealed search warrant to read the e-mails of Fox News reporter James Rosen, after it told a federal magistrate that he had committed a crime by asking a State Department security contractor to share secret material about North Korea.

The government ordered Google to provide it with access to Rosen’s Gmail account and not to disclose that it had done so.²³⁰ The law allows the government to use a search warrant to seize a reporter’s communications if the person is specifically accused of committing a crime.²³¹ Rosen was not charged under the Espionage Act – no reporter ever has been – but the FBI used the act to accuse him as a co-conspirator in violating espionage laws, in order to apply for a search warrant. Some national security reporters have expressed dismay over the case, saying Rosen’s activities are part of the normal activities of reporters in that issue area.²³²

Officials were granted a warrant to look at just two days of Rosen’s e-mails, but a more recent order by a federal judge approved a search warrant that allowed federal prosecutors to access all of the content in the history of the Gmail account of a suspect in a money laundering investigation.²³³

Google Furnishes Data to the NSA and Other Security and Defense Agencies

Google has many contracts with military and intelligence agencies such as the National Security Agency (NSA), Central Intelligence Agency (CIA), and Department of Defense. These agencies are not always forthcoming about their contracts with Google.

For example, in 2010, after Chinese hackers revealed a security vulnerability in Google’s network infrastructure, the company entered into a “formal information-sharing relationship” with the NSA.²³⁴ The Electronic Privacy Information Center (EPIC) filed a Freedom of Information Act (FOIA) request on the details of the relationship and what kind of information was being shared. The NSA issued a “Glomar” response, meaning it

²²⁹ Richard (RJ) Eskow, *Let’s Nationalize Amazon and Google: Publicly Funded Technology Built Big Tech*, SALON (July 8, 2014), <http://bit.ly/1r6kxjq>.

²³⁰ Ken Dilanian, *FBI Spied on Fox News Reporter, Accused Him of Crime*, LOS ANGELES TIMES (May 20, 2013), <http://lat.ms/1qeGI Gy>.

²³¹ *Id.*

²³² *Id.*

²³³ Patrick Howell O’Neill, *A Judge Just Handed Someone’s Entire Gmail Account over To U.S. Prosecutors*, THE DAILY DOT (July 21, 2014), <http://bit.ly/Undvur>.

²³⁴ Yasha Levine, *E-Mails Showing Google’s Closeness with the NSA Director Really Aren’t That Surprising*, PANDODAILY (May 13, 2014), <http://bit.ly/1nLBqAC>.

neither confirmed nor denied agency records on the matter. EPIC appealed, but the NSA never responded.²³⁵ EPIC sued, and a court ruled that the NSA was not legally required to provide any further information.²³⁶

The public's first glimpse into the extent to which the NSA has used Google and other technology companies to collect information came in June 2013, when the *Guardian* newspaper reported on top-secret documents leaked to it by former NSA contractor Edward Snowden.

Snowden revealed that the NSA and FBI for years had some form of direct access to the troves of data maintained major technology companies, including Google, through a top-secret program called PRISM. An official wrote in a set of notes, "98 percent of PRISM production is based on Yahoo!, Google and Microsoft; we need to make sure we don't harm these sources," according to a classified report obtained by *The Washington Post*.²³⁷ The scale of the program, as described in classified documents, was massive, accounting for nearly one in seven intelligence reports by an agency that counts its annual intake in the trillions of communications.²³⁸

The Washington Post reported that several companies "said they had no knowledge of the program, did not allow direct government access to their servers and asserted that they responded only to targeted requests for information." According to the documents, Google offerings to PRISM included Gmail, voice and video chat, Google Drive files, photo libraries, and live surveillance of search terms.²³⁹

In response to the PRISM revelations, a Google spokesman said, "We disclose user data to government in accordance with the law, and we review all such requests carefully. From time to time, people allege that we have created a government 'back door' into our systems, but Google does not have a 'back door' for the government to access private user data."²⁴⁰

But Google and other technology companies may have been unwittingly furnishing information to the NSA.²⁴¹

²³⁵ *EPIC v. NSA: Google / NSA Relationship*, ELECTRONIC PRIVACY INFORMATION CENTER (Viewed on August 27, 2014), <http://bit.ly/1AVqjH9>.

²³⁶ Bill Mears, *Court Affirms Protection of Google/NSA Communications*, CNN (May 11, 2012), <http://cnn.it/1qLgkit>.

²³⁷ Barton Gellman and Laura Poitras, *U.S., British Intelligence Mining Data from Nine U.S. Internet Companies in Broad Secret Program*, THE WASHINGTON POST (June 7, 2013), <http://wapo.st/1gIS8gu>.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

The Washington Post reported in October 2013 that documents leaked by Snowden showed that the NSA had been attaining user information by exploiting a weakness in Google's systems, enabling it to vacuum up web traffic from links between Google's own data centers. (The program also availed itself of information held by Yahoo!). This project, codenamed MUSCULAR, was a joint effort with the United Kingdom spy agency Government Communications Headquarters (GCHQ). According to one document, NSA field collectors processed and sent back over 180 million records in just 30 days. The NSA contributed 100,000 "selectors," or search terms, to sift through the data.²⁴² The agencies collected such deluges of information that analysts actually complained about the quantity.²⁴³

During a September 2014 panel discussion, the general counsel of the Director of National Intelligence, Robert Litt, would not say how many e-mails the government collects from Gmail, according to Government Accountability Project's Jesselyn Radack, attorney for Edward Snowden.²⁴⁴

Google Employees' Access to Information Jeopardizes Users' Privacy

Some number of Google employees have unfettered access to all kinds of personal information most users might not expect could be viewed by humans. In July 2010, Google fired an engineer who was caught looking at the personal information of four underage teens, potentially among unknown others.²⁴⁵ In his position as a Site Reliability Engineer, the employee had access to the company's most sensitive data, including users' e-mails, contact lists, chat transcripts, Google Voice call logs and more.²⁴⁶ Google did not respond to the reporter to discuss how many accounts the employee inappropriately accessed, or whether there would be any investigation into other possible privacy abuses by employees.²⁴⁷

A recent survey found that respondents were slightly more afraid of the prospect of Google (and its employees) having access to their private data than of the NSA having that access.²⁴⁸ That may be in part because so many people knowingly provide Google

²⁴² Kim Zetter, *Report: NSA Is Intercepting Traffic From Yahoo, Google Data Centers*, WIRED (October 30, 2013), <http://wrd.cm/1BbxGfM>.

²⁴³ Barton Gellman and Matt DeLong, *How the NSA's MUSCULAR Program Collects Too Much Data from Yahoo And Google*, THE WASHINGTON POST (October 30, 2013), <http://wapo.st/1nWRc7v>.

²⁴⁴ Jesselyn Radack, TWITTER (September 19, 2014), <http://bit.ly/XwjsXG>.

²⁴⁵ Adrian Chen, *GCreep: Google Engineer Stalked Teens, Spied on Chats (Updated)*, GAWKER (September 14, 2010), <http://bit.ly/11V3BIx>.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Chris Matyszczyk, *People Trust NSA More Than Google, Survey Says*, CNET (October 28, 2014), <http://cnet.co/1zfd8Vh>.

with so much information on such a regular basis. It also may seem less clear what Google is able to do with the information it has.

Security Breaches Can Jeopardize Personal Information Held by Google

Having so much user information in one place also creates a greater potential for damaging leaks.

In September 2014 Google's DoubleClick ad servers were infected with malware, causing malicious ads to appear on users' computers and, in turn, for the computers to become infected.²⁴⁹ The attack came just weeks after Google removed a smart phone app called Disconnect Mobile from its Android Play store. Disconnect was designed to stop other apps from collecting information on users.²⁵⁰

One of the founders of Disconnect told Public Citizen that his company's software would have blocked the attack. "One hundred percent we would have blocked that attack. And many attacks like that that never get reported," Disconnect co-founder Casey Oppenheim told Public Citizen.²⁵¹

"This is happening all the time on lesser-known ad networks, where it's not a big story. One hundred thousand people here, 10,000 people here, 50,000 people there – it's happening every day," Oppenheim continued. "If you have a credit card and a URL, [Google] wants to take your money and distribute your ads. And if your ad contains a malicious exploit, or more commonly is linked to a website that looks like a legitimate site but is a phishing site ... this is an ideal distribution network for criminals who are looking to get your personal information."²⁵²

²⁴⁹ Russell Brandom, *Google's Doubleclick Ad Servers Exposed Millions of Computers to Malware*, THE VERGE (September 19, 2014), <http://bit.ly/1v0pGKS>.

²⁵⁰ Reed Albergotti and Alistair Barr, *Why Some Privacy Apps Get Blocked from the Android Play Store*, THE WALL STREET JOURNAL (Aug. 28, 2014), <http://on.wsj.com/1ue6jly>.

²⁵¹ Casey Oppenheim, phone interview with Public Citizen's Sam Jewler (October 8, 2014).

²⁵² *Id.*

“If you keep data for purposes of data mining and analytics, there’s nothing you can do to stop [it] when the government comes and asks for it later. And so companies have to choose – they have to choose privacy, or the business model ... Google has chosen keeping and monetizing and mining user data, over privacy.”²⁵³

–*Christopher Soghoian, Principal Technologist and a Senior Policy Analyst of the American Civil Liberties Union’s Speech, Privacy and Technology Project (2012)*

VII. Google’s Business Model Is in Tension With Users’ Privacy

Technology experts from inside and outside Google have argued that Google would not be able to furnish the services it provides for free without collecting and generating revenue from users’ personal information. Google has fought to protect and expand its ability to collect and retain information for the purpose of generating revenue from it.

In 2013, Google wrote in a brief to the U.S. District Court of Northern California that a person sending e-mail to a Gmail account “has no legitimate expectation of privacy in information he voluntarily turns over to third parties.”²⁵⁴ Google claimed in its brief that it “must” collect the information it does in order to fulfill its business model:

First, all of the federal and state wiretap laws at issue specifically exempt [electronic communication service] ECS providers from liability based on conduct in their ordinary course of business. These protections reflect the reality that ECS providers like Google *must* scan the e-mails sent to and from their systems as part of providing their services. While Plaintiffs go to great lengths to portray Google in a sinister light, the Complaint actually confirms that the automated processes at issue are Google’s ordinary business practices implemented as part of providing the free Gmail service to the public. [emphasis Google’s]²⁵⁵

That lawsuit, claiming Google violated wiretapping laws by monitoring the contents of users’ e-mails, was dismissed.²⁵⁶ Google updated its terms and conditions to say, “Our

²⁵³ Christopher Soghoian, *Why Google Won’t Protect You from Big Brother*, TEDxSANJOSECA (2012), <http://bit.ly/Xjk56P>.

²⁵⁴ Matt Peckham, *Google Says Those Who E-mail Gmail Users Have “No Legitimate Expectation of Privacy”*, TIME (August 14, 2013), <http://ti.me/1s5rMvL>.

²⁵⁵ *In Re Google Inc. Gmail Litigation, Defendant Google Inc.’s Motion to Dismiss Plaintiffs’ Consolidated Individual and Class Action Complaint; Memorandum of Points and Authorities in Support Thereof*, Page 2 (September 5, 2013) <http://bit.ly/1sEQw95>.

²⁵⁶ *Google “Reveals User” Over Gmail Child Abuse Images*, BBC (August 4, 2014). <http://bbc.in/1olFi6c>.

automated systems analyze your content (including e-mails) to provide you personally relevant product features, such as customized search results, tailored advertising, and spam and malware detection. This analysis occurs as the content is sent, received, and when it is stored.”²⁵⁷

Encryption technology that protects e-mails from being read by anyone but the sender and recipient has existed since the 1990s.²⁵⁸ Google is technologically capable of providing e-mail services free from information scanning, but providing such protections would hamper the company’s ability to exercise its business model.

Internet search engines do not have to collect information in order to operate. Search engine DuckDuckGo, for example, has a privacy policy that simply states, “We don’t collect or share personal information. That’s our privacy policy in a nutshell.”²⁵⁹ The search engine has been praised by privacy advocates and picked up in popularity in the years since the Edward Snowden revelations about government surveillance. In September 2014 it was also apparently blocked in China.²⁶⁰

As Christopher Soghoian, currently principal technologist and a senior policy analyst of the American Civil Liberties Union’s Privacy and Technology Project said: “It’s just that their [Google’s] business model is in conflict with your privacy.” In response, Vince Cerf, who is Vice President and “Chief Internet Evangelist” of Google (and also considered a “father of the Internet”) said, “I think you’re quite right, however, that we couldn’t run our system if everything in it were encrypted because then we wouldn’t know which ads to show you. So this is a system that was designed around a particular business model.”²⁶¹

Soghoian, who has been dubbed the “Ralph Nader for the Internet Age” by *Wired* magazine, said “There are ways to protect users. The best way to protect users is to not keep the data in the first place. Companies that do not keep data have nothing to hand over when the government comes asking for it later.”²⁶²

While Google is at the forefront of the information collection business model, another major technology business model is to simply sell products. About the time of Apple’s

²⁵⁷ *Id.*

²⁵⁸ Yasha Levine, *Google And Encryption: Why True User Privacy Is Google’s Biggest Enemy*, PANDODAILY (January 27, 2014), <http://bit.ly/1tGyyqX>.

²⁵⁹ *Privacy*, DUCKDUCKGO (Viewed on September 8, 2014), <http://bit.ly/Zf4fvw>.

²⁶⁰ Lance Whitney, *Search Engine Duckduckgo Blocked in China*, CNet (September 22, 2014), <http://cnet.co/1xyhCEk>.

²⁶¹ Christopher Soghoian, *Two Honest Google Employees: Our Products Don’t Protect Your Privacy*, SLIGHT PARANOIA (BLOG). (November 2, 2011), <http://bit.ly/1p80jLZ>.

²⁶² Christopher Soghoian, *Why Google Won’t Protect You from Big Brother*, TEDXSANJOSECA 2012 (May 21, 2012), <http://bit.ly/Xjk56P>.

October 2014 release of Apple Pay, a product rivaling Google Wallet, Apple CEO Tim Cook wrote:

A few years ago, users of Internet services began to realize that when an online service is free, you're not the customer. You're the product ... Our business model is very straightforward: We sell great products. We don't build a profile based on your e-mail content or Web browsing habits to sell to advertisers. We don't 'monetize' the information you store on your iPhone or in iCloud. And we don't read your e-mail or your messages to get information to market to you.²⁶³

Google Has Made Some Security Reforms

In response to consumer and regulatory pressure over the last few years, Google has created some ways to opt out of certain kinds of tracking and tracking-based advertising. These are generally not default settings, but ones users must discover and adjust themselves. For instance, Google offers a way to reset your Advertising ID, so as to erase what's been recorded about your behavior, and a way to opt out of what it calls interest-based ads on Android apps.²⁶⁴

Google has made more of an effort to protect some of its users' information since the Snowden revelations brought increased public scrutiny to issues of electronic privacy. In the wake of the revelations, Google and Yahoo! both announced they would explore ways to create secure, encrypted e-mail systems that would protect content even from the companies' eyes. It uses PGP encryption, which protects content – though not sender or recipient identities – and which has never been cracked.²⁶⁵ It will not necessarily become widely used however, as users would have to take the step to turn on the encryption tool.²⁶⁶

In an attempt to protect from hackers, Google has been encrypting Gmail messages since 2010, but the messages have only remained encrypted if the other person's e-mail provider uses encryption, and many do not.²⁶⁷ In June 2014, Google publicly criticized some providers for not providing that protection.²⁶⁸ But these steps appear limited to protecting users from having their information protected from hackers, not security

²⁶³ Tim Cook, *A Message from Tim Cook about Apple's Commitment to Your Privacy*, APPLE (Viewed on October 1, 2014), <http://bit.ly/1sE0Tcq>.

²⁶⁴ Jim Edwards, *Google's New 'Advertising ID' is Now Live and Tracking Android Phones – This Is What It Looks Like*, BUSINESS INSIDER (January 27, 2014), <http://read.bi/1e3fbl3>. (This article contains guided instructions for how to reset one's ID and opt out of targeted ads on Android apps.)

²⁶⁵ Danny Yadron, *Yahoo, Google Envision Spy-Free E-Mails*, THE WALL STREET JOURNAL (August 7, 2014), <http://on.wsj.com/1nzOXpq>.

²⁶⁶ *Id.*

²⁶⁷ Danny Yadron, *Comcast to Encrypt E-Mail for Security*, THE WALL STREET JOURNAL (June 3, 2014), <http://on.wsj.com/1h6FjhC>.

²⁶⁸ *Id.*

agencies. *The Wall Street Journal* reported that while Google encrypts e-mails sent over the Internet, it still scans the e-mails stored on its servers for advertising purposes.²⁶⁹ If Google retains the key to decrypt information for advertising purposes, security agencies could likely request the key as well.

Google also has announced that it would gradually begin making its Web search ranking algorithm friendlier to encrypted websites, which could become a powerful incentive for the Internet to become more secure over time.²⁷⁰ After Apple publicly criticized companies that make money by selling user data, such as Google, Google then said that its next Android operating system will encrypt user data by default, making it harder for law enforcement and others to access the new phones' data.²⁷¹ However, Google's encryption of Hangout messages will apply only as they transfer to and from Google's servers, not while they are on the servers.²⁷² This may make them more available for government information requests.

Google also offers ways to opt out of interest-based advertising online based on targeting from the collection of user information.²⁷³ Users choosing to opt out of targeted ads both on Google sites and across the web will still see ads, but they will be "less relevant" and not "based on your interests" or on visits to advertiser websites, according to Google.²⁷⁴

Users also can see a list of at least some of the information Google associates with their various Google accounts (YouTube, Android, Blogger, Books, Chrome and more) on the Google Dashboard.²⁷⁵ That page also includes links to view, delete, save or edit one's search history. One can also switch to an option in Google Chrome called "incognito mode," in which Chrome does not save a record of the user's visits or downloads.²⁷⁶

²⁶⁹ *Id.*

²⁷⁰ Rolfe Winkler, *Google To Boost Encrypted Websites In Rankings*, THE WALL STREET JOURNAL (August 7, 2014), <http://on.wsj.com/1oFpwrM>.

²⁷¹ Danny Yadron and Rolfe Winkler, *Google To Encrypt Phone Data In Android*, THE WALL STREET JOURNAL (September 18, 2014), <http://on.wsj.com/1r6UzOl>.

²⁷² *Id.*

²⁷³ Seth Rosenblatt, *How to Opt Out of Some Targeted Google Ads*, CNET (October 14, 2013), <http://cnet.co/X7f4hN>.

²⁷⁴ *Ads Settings: Settings for Google Ads*, GOOGLE (Viewed on September 12, 2014), <http://bit.ly/1wmDSl3>.

²⁷⁵ Hayley Tsukayama, *How to Choose What You Share With Google*, THE WASHINGTON POST (January 26, 2012), <http://wapo.st/1qtIrsE>.

²⁷⁶ *Browse in Private (Incognito Mode)*, GOOGLE (Viewed on September 12, 2014), <http://bit.ly/1dBbqiB>.

“We need to be more transparent. And we’ve heard that from a number of other shareholders ... Let us come back with some ideas.”²⁷⁷

— *Google Executive Chairman Eric Schmidt in response to question from Public Citizen’s Sam Jewler (May 2014)*

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“I don’t know the status of [efforts to be more transparent], but we certainly promised. So maybe we can follow up on that one.”²⁷⁸

—*Google Executive Chairman Eric Schmidt in response to question from Public Citizen’s Sam Jewler (October 2014)*

VIII. Google Has Become One of the Top Political Spenders Among American Companies

Ten years ago, Google barely had a presence in the halls of Washington, D.C. In 2002, the firm did not report spending a dollar on federal lobbying. As recently as 2010, one of its top executives spoke with disdain and a bit of surprise on the degree of influence wielded by Washington lobbyists. Now, Google is the biggest lobbying spending corporation in the United States. In 2014 the firm has commissioned a force of more than 100 lobbyists, about 80 percent of whom are former federal government employees, to do its bidding in Washington, D.C., and has deployed agents in numerous states to grease the path for approvals for its groundbreaking technologies and keep regulators at bay.

Googles uses information about others for most of its revenue-generating measures. But Google does not permit the rest of the public a window into its activities to anywhere near the degree to which it avails itself of a view of theirs.

And Google’s use of its resources to stack the deck in its favor goes far beyond conventional lobbying. More insidiously, the firm has benefited from an array of less disclosed methods and practices to strengthen its grip on policy makers, potential watchdogs and other thought leaders. As an example of these initiatives, termed “soft power” by some, Google provides undisclosed amounts of funding to about 140 outside

²⁷⁷ Sam Jewler, *More Than 100 Rally at Google Shareholder Meeting; Google Promises to ‘Come Back With Some Ideas*, CITIZEN VOX (May 15, 2014), <http://bit.ly/1vxQIKO>.

²⁷⁸ *Waiting for Google*, U.S. CHAMBER WATCH (Oct. 8, 2014), <http://bit.ly/1q4eIRh>.

groups. These include business trade groups, including the U.S. Chamber of Commerce.²⁷⁹

Google's Lobbying Expenditures Have Soared

In 2010, then-Google CEO (and now Executive Chairman) Eric Schmidt said, "I think the average American doesn't realize how much the laws are written by lobbyists... and it's shocking now – having spent a fair amount of time inside the system – how the system actually works. And it's obvious that if the system's organized around the incumbencies writing the laws, the incumbencies will benefit from the laws that are written."²⁸⁰

Google had already climbed well up the Washington influence-peddling ladder by the time Schmidt launched his broadside against lobbyists. That year, Google ranked 68th in federal lobbying spending among businesses, which marked a steep climb from 2003, when it spent about \$100,000, making it the 213th biggest corporate lobbying spender in the United States.²⁸¹ Google is now the leading spender on federal lobbying among corporations.

The issues Google lobbies on in Washington and in the states are as broad as its list of business lines, and the company appears to have enjoyed a virtually unbroken winning streak in recent years.

In 2010, the Federal Trade Commission began an antitrust investigation into Google. After the case was settled on terms that most observers found highly favorable to the firm in January 2013, Google's lobbying expenditures had jumped to \$18 million, second highest among businesses.²⁸² Since 2012, it has spent an average of \$1.4 million per month on federal lobbying, and a total of \$47.7 million – making it the highest federal lobbying spender among companies. Google ranked first in federal lobbying spending among corporations for the first three quarters of 2014.²⁸³ [See Table 1 and Figure 1]

²⁷⁹ U.S. Public Policy: Transparency, GOOGLE (Viewed on August 26, 2014), <http://bit.ly/1nsEwGq>.

²⁸⁰ Derek Thompson, *Google's CEO: "The Laws Are Written by Lobbyists"*, THE ATLANTIC (October 1, 2010), <http://theatlantic.com/1xzwl06>

²⁸¹ Tom Hamburger and Matea Gold, *Google, Once Disdainful of Lobbying, Master of Washington Influence*, THE WASHINGTON POST (April 12, 2014), <http://wapo.st/1elXuhl>.

²⁸² *Id.*

²⁸³ *Influence & Lobbying / Lobbying / Top Spenders*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org) (Viewed on Nov. 3, 2014), <http://bit.ly/1vMBBfS>.

Table 1: Corporations Disclosing Highest Federal Lobbying Expenditures, 2014 (Through November 3)

	Business	Amount
1	Google Inc.	\$13,680,000
2	Dow Chemical	\$12,520,000
3	General Electric	\$12,480,000
4	Boeing Co.	\$12,440,000
5	Comcast Corp.	\$11,940,000
6	United Technologies	\$11,438,000
7	CVS Health	\$10,977,640
8	AT&T Inc.	\$10,960,000
9	Lockheed Martin	\$10,688,325
10	Verizon Communications	\$10,220,000

Source: Center for Responsive Politics (www.opensecrets.org)

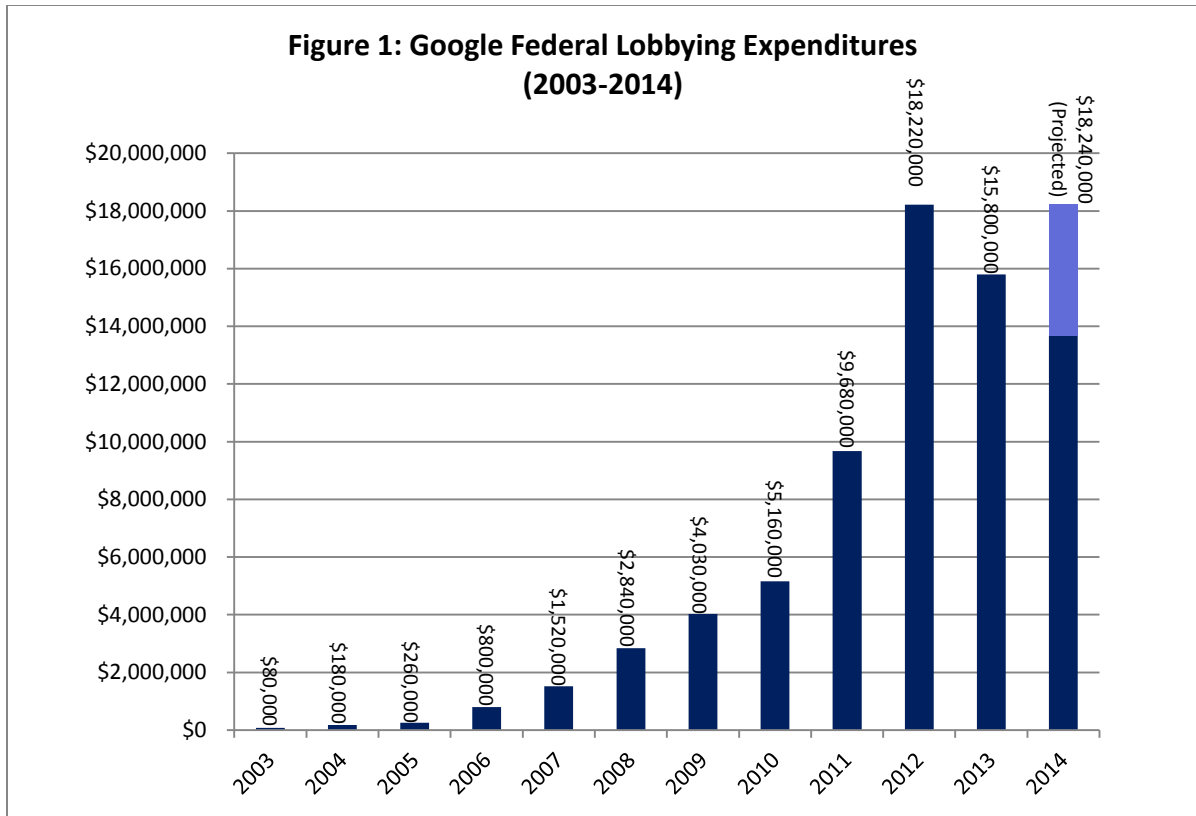
Meanwhile, Google concentrates its spending on lobbyists who used to work for the federal government, which helps ensure that those lobbyists know the tricks to getting favorable legislation passed and blocking actions the company opposes. Of 122 lobbyists employed by Google in 2013 and 2014, 98 previously worked for the federal government, according to the Center for Responsive Politics.²⁸⁴

In June 2014, Google moved into new Capitol Hill offices symbolic of its expanded political efforts. The new office is about 25,000 square feet larger than the company's previous Washington, D.C. offices.²⁸⁵ Its new DC office is roughly the square footage of the White House.²⁸⁶

²⁸⁴ *Google Inc. Profile*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org) (viewed on Oct. 31, 2014), <http://bit.ly/1E8ydR3>. (Figures include lobbyists employed by lobbying firms as well as those working as direct employees of Google.)

²⁸⁵ Tom Hamburger and Matea Gold, *Google, Once Disdainful of Lobbying, Master of Washington Influence*, THE WASHINGTON POST (April 12, 2014), <http://wapo.st/1eIXuHl>.

²⁸⁶ *Id.*; Stephanie Green, *Google's New Digs in DC Opens to Senators, Dogs*, BLOOMBERG (June 16, 2014), <http://bloom.bg/1tpccbX>; and Jonathan O'Connell, *Google Expands, Relocates Washington Offices*, THE WASHINGTON POST (July 17, 2013), <http://wapo.st/1ARZ3LC> and Todd Shields, *Google's 8th Ranked Lobbying Machine Takes on Spy Debate*, BLOOMBERG (November 5, 2013), <http://bloom.bg/1tAPJcl>.



Source: Center for Responsive Politics (www.opensecrets.org). Figures through three quarters of 2014.

Google Has Plied Politicians in the States to Pave the Way for New Technologies

Google's lobbying in the states, which have many important regulatory responsibilities, may be more significant than its efforts to strong-arm the federal government.

The issues Google lobbies on in the states run the gamut of its rapidly increasing business lines, including rules governing driverless cars, the use of its computerized eye glasses, and on concerns over competition stemming from dominance in certain sectors, particularly those concerning its Internet search business.

As early as 2011, the company was lobbying in Nevada to legalize the operation of the cars on public roads. Google's proposed legislation included an amendment to an electric-vehicle bill providing for the licensing and testing of autonomous vehicles, as well as an exemption from the ban on distracted driving that would allow occupants to send text messages from the driver's seat. In June 2011, after intensive lobbying by Google, Nevada became the first state to officially approve self-driving cars, creating a

regulatory system of performance standards and licensing requirements for autonomous vehicles.²⁸⁷

In September 2012, after a vigorous state lobbying campaign by Google, California became the second state to allow companies to test self-driven cars on public roads. Howard Posner, a consultant to the California Assembly Transportation Committee, acknowledged that the public was not favorable toward self-driving cars. Nor was the technology necessarily ready.

“By the time this thing rolls out, people will probably be more comfortable. But today they’re not, and I assumed the legislators would have the same feeling.” The legislation passed 37-0 in the Senate and 74-2 in the Assembly.²⁸⁸ Governor Jerry Brown signed the bill at Google’s headquarters.²⁸⁹ During the signing ceremony he was asked who would get a ticket if a self-driving car ran a red light. “I don’t know,” he responded, “whoever owns the car, I would think. But we will work that out. That will be the easiest thing to work out.”²⁹⁰

Disclosure statements filed by Google showed that it had lobbied the legislature, the California Highway Patrol and the Department of Motor Vehicles for almost a year on the issue, over which time it paid a prominent Sacramento lobbyist \$140,000. During the 2009-10 legislative session, Google had given campaign contributions totaling \$64,000 to 36 members and successful candidates for the state Senate and Assembly, along with \$25,900 each to Brown and his unsuccessful opponent Meg Whitman.²⁹¹ During the 2011-12 session, it made contributions totaling \$92,000 to 45 legislators and legislative candidates, a secretary of state candidate, a technology political action committee, and committees for both major parties, as well as \$26,000 to Brown.²⁹²

In June 2014, *Politico* looked at twelve states that have explored some new regulation of driverless vehicles, and found that Google had employed lobbyists in almost every one of the dozen capitals to ward off precautionary safeguards. This began in the

²⁸⁷ John Markoff, *Google Lobbies Nevada to Allow Self-Driving Cars*, THE NEW YORK TIMES (May 10, 2011), <http://nyti.ms/1wIKQCd> and Alex Knapp, *Nevada Passes Law Authorizing Driverless Cars*, FORBES (June 22, 2011), <http://onforb.es/XVYL8J>.

²⁸⁸ Zusha Elinson, *Google Car Zooms Toward Legal Status*, THE BAY CITIZEN (September 24, 2012), <http://bit.ly/1qFmLqP>.

²⁸⁹ Jerry Hirsch, *Brown Signs Bill Regulating Self-Driving Cars in California*, LOS ANGELES TIMES (September 25, 2012), <http://lat.ms/1C6RjqP>.

²⁹⁰ Steve Henn, *Calif. Greenlights Self-Driving Cars, but Legal Kinks Linger*, NPR (October 3, 2012), <http://n.pr/1qG7N3R>.

²⁹¹ Zusha Elinson, *Google Car Zooms Toward Legal Status*, THE BAY CITIZEN (September 24, 2012), <http://bit.ly/1qFmLqP>.

²⁹² *Campaign Finance: Google, Inc.*, CAL-ACCESS, California Secretary of State Debra Bowen (Viewed on August 28, 2014), <http://bit.ly/1wJfefz>.

aforementioned Nevada and California, and included New Jersey, New York and Maryland in early 2014.²⁹³

One of the primary arguments for the autonomous vehicles is that they will be safer and help reduce accidents and casualties on the road. However, many critics see dangers in ceding human control to the vehicles, which have no user-controlled brakes or steering wheels.

When Brown signed legislation permitting self-driving cars in 2012, the cars were not yet even able to drive in reverse.²⁹⁴ The vehicles have safely driven more than 700,000 miles, but due to their need for preparatory mapping to identify in advance things like new traffic signals, they cannot drive in 99 percent of the United States. They also cannot drive in snow or heavy rain conditions, nor in parking lots, nor can they park or detect potholes or squirrels. Making left turns amid high-speed oncoming traffic is a challenge.²⁹⁵

Critics also raise ethical questions. When a car with no steering wheel moving at high speed toward a person or large animal in the road, should it swerve and risk the driver's life or continue on and risk the life of another?²⁹⁶ Does the decision change if the car has to choose between hitting a motorcycle, a small car or a large truck?²⁹⁷ Preemptive lobbying behind closed doors precludes the ability of the public to openly debate how to address these kinds of ethical questions and risks.

California has decided to take the lead on trying to solve such questions. In September 2014, it implemented safeguards including one requiring that drivers of autonomous vehicles be able to take "immediate physical control" of them, making a self-driving car without a steering wheel illegal.²⁹⁸

Some have speculated that self-driving cars could be profitable in part because they could make online shopping easier. Online shoppers could be picked up and driven to collect their purchases, while watching a TV show or reading a book. Google Glass technology could be put in the windows of a self-driving car, showing people being

²⁹³ Tony Romm, *Google's States of Play*, POLITICO (June 22, 2014), <http://politi.co/1rfm5sB>.

²⁹⁴ Steve Henn, *Calif. Greenlights Self-Driving Cars, but Legal Kinks Linger*, NPR (October 3, 2012), <http://n.pr/1qG7N3R>.

²⁹⁵ Lee Gomes, *Hidden Obstacles for Google's Self-Driving Cars*, TECHNOLOGY REVIEW (August 28, 2014), <http://bit.ly/V53R3M>.

²⁹⁶ Jason Millar, *Should Your Robot Driver Kill You to Save a Child's Life?*, THE CONVERSATION (August 1, 2014), <http://bit.ly/1tfDzr1>.

²⁹⁷ Id.

²⁹⁸ Alistair Barr, *A Google Car Without a Steering Wheel? Not So Fast, California Says*, THE WALL STREET JOURNAL (August 21, 2014), <http://on.wsj.com/1muL7P9>.

driven in the automated cars how restaurants they drive by are rated or what performances are coming next at music clubs.²⁹⁹

Google also has been lobbying state legislators who are promoting legislation to restrict the use of Google Glass by people driving cars because having a small computer screen in the corner of one's eyeglass frame could create distractions from the road. At least eight states are considering such regulation, and Google has lobbied against these regulations in at least four of them. Reuters reported that Google deployed lobbyists on this issue in Illinois, Delaware and Missouri.³⁰⁰ *Politico* reported that Google lobbied against Glass restrictions in New York as well.³⁰¹

Elected officials say Google's main argument was that regulating Google Glass would be premature because the technology is not yet widely available. "Who are they fooling?" said Illinois State Sen. Ira Silverstein, who introduced a Google Glass restriction bill in December 2013, and said he believed the company intends for the product to be readily available fairly soon.³⁰²

Other legislators have expressed a desire for Glass technology to make it clear when the camera feature is being activated, so people around the Glass user know when they might be under watch. But Google may be trying to do the opposite. Based on patent purchases, Google may be pursuing merging Glass with designs and technologies such as normal looking glasses and contact lenses, which would make Google Glass less conspicuous, making it harder for the general public to know when it's being used.³⁰³

²⁹⁹ Mark Hachman, *Will Google Make Money Off the Self-Driving Car?* PC MAG (September 22, 2012), <http://bit.ly/XVWvOK>.

³⁰⁰ Dan Levine, *Exclusive: Google Sets Roadblocks to Stop Distracted Driver Legislation*, REUTERS (February 25, 2014), <http://reut.rs/1po4VYn>.

³⁰¹ Tony Romm, *Google's States of Play*, POLITICO (June 22, 2014), <http://politi.co/1rfm5sB>.

³⁰² Dan Levine, *Exclusive: Google Sets Roadblocks to Stop Distracted Driver Legislation*, REUTERS (February 25, 2014), <http://reut.rs/1po4VYn>.

³⁰³ Kia Makarechi, *Move Over, Google Glass; Here Come Google Contact Lenses*, VANITY FAIR (April 22, 2014), <http://vnty.fr/1ln950L>.

Google Lacks Transparency in Political Spending

Google's stated ethos revolves around creating "ways to bring all of the world's information to people seeking answers," but those looking for answers about Google's political spending will be disappointed.³⁰⁴ The company's political spending policies are significantly less forthcoming than some of its major tech competitors.

The 2014 CPA-Zicklin Index of Corporate Political Accountability and Disclosure rated Google's transparency policies at 45.7 percent – down from its 2013 rating of 51.4 percent, and decidedly average among a class of Fortune 500 companies with a range of voluntary disclosure policies. The rating puts Google behind technology peers such as Yahoo! and Apple (both at 58.6 percent), eBay (81.4 percent), Intel (91.4 percent), Microsoft (92.9 percent) and IBM (98.6 percent). Google got a lower rating on the index in 2014 than in 2013, even as a majority of the nearly 200 companies reviewed last year got a better score than in the previous year.³⁰⁵

In comparison to Microsoft, which has the 18th best transparency rating overall, Google lags in its openness. Google does not publicly disclose its payments to so called "527" groups, which refer to electioneering organizations that operate outside of many federal regulations. Microsoft makes partial disclosures of its contributions to them.³⁰⁶

The CPA-Zicklin analysts give Google only partial credit for its disclosure of payments to trade associations and tax-exempt organizations, such as 501(c)(4)s, which the recipients may use for electioneering purposes. Google reports that it is a member of "a number of" business trade groups and advocacy organizations, 43 of which it discloses. But it does not reveal the size or nature of those donations. It reports that these are the organizations to which it provides "the most substantial contributions," but no definition of this term is provided.³⁰⁷

This list of groups includes organizations such as the U.S. Chamber of Commerce, which has opposed Google's stated policies and interests in areas such as Internet freedom

³⁰⁴ *What We Believe: Ten Things We Know to Be True*, GOOGLE (Viewed on September 2, 2014), <http://bit.ly/1x24t2P>.

³⁰⁵ THE 2014 CPA-ZICKLIN INDEX OF CORPORATE POLITICAL DISCLOSURE AND ACCOUNTABILITY: HOW LEADING COMPANIES ARE MAKING POLITICAL DISCLOSURE A MAINSTREAM PRACTICE, CENTER FOR POLITICAL ACCOUNTABILITY AND CAROL AND LAWRENCE ZICKLIN CENTER (Sept. 24, 2014), <http://bit.ly/10aAf3V> and THE 2013 CPA-ZICKLIN INDEX OF CORPORATE POLITICAL DISCLOSURE AND ACCOUNTABILITY: HOW LEADING COMPANIES ARE MAKING POLITICAL DISCLOSURE A MAINSTREAM PRACTICE, CENTER FOR POLITICAL ACCOUNTABILITY AND CAROL AND LAWRENCE ZICKLIN CENTER 14 (Sept. 24, 2013), <http://bit.ly/10oD69k>. See also, Tom Hamburger, *Study: Major Companies are Increasingly Disclosing Their Political Spending*, THE WASHINGTON POST (September 24, 2014), <http://wapo.st/Y2NTEY>.

³⁰⁶ THE 2014 CPA-ZICKLIN INDEX OF CORPORATE POLITICAL DISCLOSURE AND ACCOUNTABILITY: HOW LEADING COMPANIES ARE MAKING POLITICAL DISCLOSURE A MAINSTREAM PRACTICE, CENTER FOR POLITICAL ACCOUNTABILITY AND CAROL AND LAWRENCE ZICKLIN CENTER (Sept. 24, 2014) <http://bit.ly/10aAf3V>.

³⁰⁷ *U.S. Public Policy: Transparency*, GOOGLE (Viewed on September 11, 2014), <http://bit.ly/1nsEwGq>.

(specifically on the Stop Online Piracy Act and the Protect IP Act) and on clean energy initiatives. Some major technology companies have exited the U.S. Chamber in recent years over policy differences in philosophies. Apple departed over climate change issues in 2009 and Yahoo! departed, likely over Internet freedom issues, in 2011.³⁰⁸

Contributions to groups like the U.S. Chamber of Commerce can range widely, from the tens of thousands to the millions.³⁰⁹ The Chamber spends heavily on lobbying and undisclosed campaign expenditures. In contrast to Google, Microsoft lists trade associations receiving more than \$25,000 from it in brackets of donation size: \$25,000-\$99,000; \$100,000-\$499,000; \$500,000-\$999,999; and \$1 million-plus. It also makes efforts to list what portions of those donations go toward lobbying and political contributions. For example, in fiscal year 2014, Microsoft donated between \$500,000 and \$999,999 to the U.S. Chamber of Commerce; out of that contribution, \$255,000 went toward non-deductible Chamber expenses such as lobbying and campaign contributions.³¹⁰ Microsoft also has publicly distanced itself from the U.S. Chamber's positions on climate change.³¹¹ For all dues or payments of \$15,000 or more made to trade associations, Hewlett-Packard provides a list of the portion used for lobbying or political expenditures.³¹² The 2013 CPA-Zicklin report listed Microsoft and HP as its two best-practice examples for disclosure of payments to trade associations.³¹³

On oversight, too, Google trails Microsoft. See Table 2 for a comparison of Board money in politics oversight.

³⁰⁸ Keith Johnson, *Exodus: Apple Leaves Chamber of Commerce Over Climate Spat*, THE WALL STREET JOURNAL (October 5, 2009), <http://on.wsj.com/1o43a5e> and Tony Romm, *Splitsville for Yahoo, U.S. Chamber*, POLITICO MORNING TECH (October 13, 2011), <http://politi.co/1vUKPGL>.

³⁰⁹ Sam Jewler, PUBLIC CITIZEN, *The Gilded Chamber: Despite Claims of Representing Millions of Businesses, The U.S. Chamber of Commerce Gets Most of Its Money From Just 64 Donors* (February 6, 2014), <http://bit.ly/Zi8xSQ>.

³¹⁰ *Corporate Citizenship: Political Engagement: Oversight and Transparency of Trade Association Memberships*, MICROSOFT (viewed on Sept. 2, 2014), <http://bit.ly/1jbByIB>.

³¹¹ Rob Bernard, *Microsoft's Position on the U.S. Chamber Of Commerce Climate-Related Activities*, MICROSOFT GREEN BLOG (March 1, 2010), <http://bit.ly/1vUKiET>.

³¹² *Governance: Government Affairs: Associations: U.S. Federal and State Lobbying Disclosure*, HEWLETT-PACKARD (Viewed on September 2, 2014), <http://bit.ly/1rLbA2H>.

³¹³ THE 2013 CPA-ZICKLIN INDEX OF CORPORATE POLITICAL DISCLOSURE AND ACCOUNTABILITY: HOW LEADING COMPANIES ARE MAKING POLITICAL DISCLOSURE A MAINSTREAM PRACTICE, CENTER FOR POLITICAL ACCOUNTABILITY AND CAROL AND LAWRENCE ZICKLIN CENTER (Sept. 24, 2013), <http://bit.ly/10oD69k>.

Table 2: Comparison of Policies of Microsoft and Google on Political Activities

	Microsoft	Google
Does the company ...		
Have a publicly available policy that the board of directors regularly oversees the company's corporate political activity?	Yes	No
Have a specified board committee that reviews the company's policy on political expenditures?	Yes	No
Have a specified board committee that reviews the company's political expenditures made with corporate funds?	Yes	No
Have a specified board committee that reviews the company's payments to trade associations and other tax-exempt organizations that may be used for political purposes?	Yes	No
Have a specified board committee, composed entirely of outside directors, that oversees its political activity?	Yes	No
Disclose an internal process for or an affirmative statement on ensuring compliance with its political spending policy?	Yes	No

Source: 2014 CPA-Zicklin Report

At Google's May 2014 shareholder meeting, Walden Asset Management presented a shareholder proposal calling on Google to improve its political spending transparency policies.

In response to a question from a Public Citizen employee during the May shareholder meeting, Google's Executive Chairman Eric Schmidt acknowledged that there was desire among its shareholders for more transparency on its political pursuits and pledged to make improvements. Schmidt said, "Let me summarize your request. We need to be more transparent. And we've heard that from a number of other shareholders... Let us come back with some ideas. But I think we've got a very clear set of messages from a number of shareholders already about this issue."³¹⁴

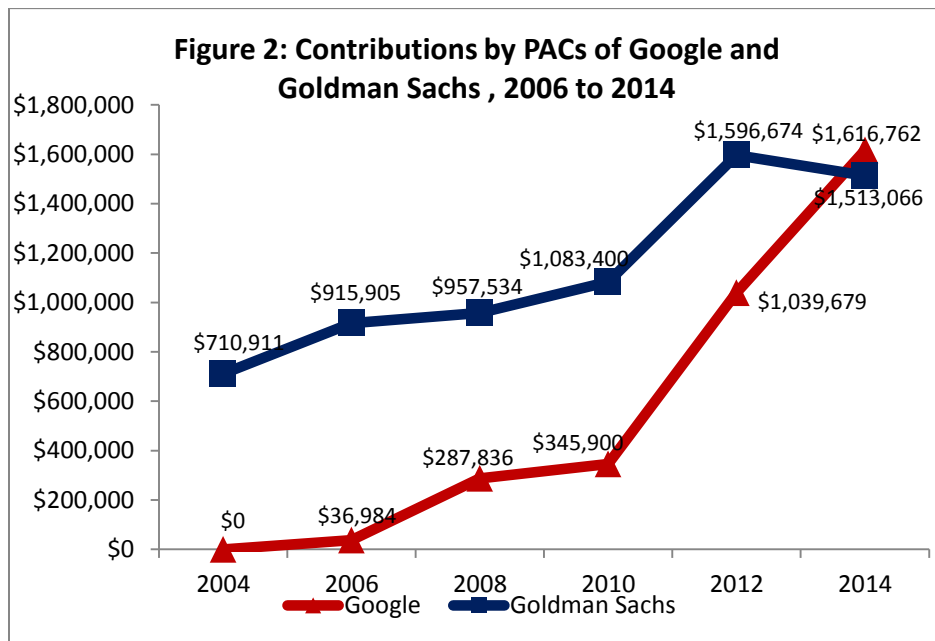
But a follow up inquiry to him six months later resulted only in an acknowledgment of his previous pledge and a referral to the firm's communications department.

³¹⁴ Sam Jewler, *More Than 100 Rally at Google Shareholder Meeting; Google Promises to "Come Back With Some Ideas"*, CITIZEN VOX blog (May 15, 2014). <http://bit.ly/1vxQIKO>.

Google's Campaign Contributions Have Soared

Over the years, Google has exponentially increased its use of campaign contributions. As recently as 2004, when Google reaped \$23 billion in an initial public offering,³¹⁵ the firm did not even have a political action committee (PAC). Recently, Google's PAC contributions eclipsed those of Wall Street bank Goldman Sachs, long thought of as one of the most notorious practitioners of the practice of using political contributions and other expenditures to bend lawmakers and other policymakers to its will.

In the 2014 election cycle, Google eclipsed Wall Street Bank Goldman Sachs in campaign spending for the 2014 cycle.³¹⁶ The Center for Responsive Politics, which monitors political spending, ranks Goldman second among corporate "heavy hitters" for its political contributions dating back to 1998.³¹⁷ On the eve of the 2014 elections, Google's political action committee, NetPAC, had spent \$1.62 million, while Goldman had spent \$1.56 million. NetPAC's expenditures were about evenly split between Democrats and Republicans.³¹⁸ [See Figure 2]



Source: Center for Responsive Politics (www.opensecrets.org)

³¹⁵ *Google Goes Public*, THE NEW YORK TIMES (Aug. 20, 2004), <http://nyti.ms/1vCxaT0>.

³¹⁶ *PAC Lookup*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org), (Viewed on Nov. 3, 2014), [<http://bit.ly/1pmre3X> (Goldman Sachs)], [<http://bit.ly/1xeZuND> (Google)]. See also, Sarah Mishkin and Gina Chon, *Google Overtakes Goldman Sachs in U.S. Political Donations*, THE FINANCIAL TIMES (October 16, 2014), <http://on.ft.com/1sLyh4c>.

³¹⁷ *Heavy Hitters: Top All-Time Donors, 1989-2014*, CENTER FOR RESPONSIVE POLITICS (Viewed on Nov. 4, 2014), <http://bit.ly/1oi3EV4>.

³¹⁸ *Influence and Lobbying: Google Inc.*, OPENSECRETS (Viewed on November 3, 2014), <http://bit.ly/1vIAOyt> and *Influence and Lobbying: Goldman Sachs*, OPENSECRETS (Viewed on November 3, 2014), <http://bit.ly/10Pz3Ea>.

Despite Google's claims that the PAC is intended as a vehicle "that allows Googlers to join together and support candidates who share our common values,"³¹⁹ the PAC's actual giving patterns suggest less wholesome intentions. It splits its gifts almost exactly in half between Republicans and Democrats, which is a practice of those seeking to accrue influence rather than advance their values. For instance, the top four recipients of its gifts this election cycle have been the National Republican Senatorial Committee, the National Republican Congressional Committee, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee, each of which received the maximum \$30,000.³²⁰ These contributions did nothing but cancel each other out in terms of fulfilling either party's objective of gaining power in the U.S. House of Representatives or U.S. Senate.

Google's PAC also has made contributions to hundreds of federal candidates and their committees. Its list of recipients starts in 2006 and extends to several 2018 campaign committees, including a \$2,500 donation to Ted Cruz for Senate.³²¹

The spending by Google's PAC is complemented by contributions made by Google employees. In 2012, Google employees contributed a combined \$803,000 to President Obama's reelection campaign.

Then-CEO Eric Schmidt, hit the campaign trail with candidate Barack Obama in 2008 and acted as an informal consultant to Obama's campaign.³²² The *Washington Examiner* reported that in 2012 that Schmidt was offered the job of Treasury or Commerce Secretary, or a new "Secretary of Business" position, in Obama's second administration.³²³

In the 2014 election cycle, Schmidt contributed \$508,000 to candidates and outside groups (through Oct. 31, 2014). These included a gift of \$250,000 to Senate Majority PAC, which is an outside group that is permitted to accept unlimited contributions and

³¹⁹ *U.S. Public Policy: Transparency*, GOOGLE (Viewed on September 19, 2014).

³²⁰ *Google Inc. PAC Profile*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org) (Viewed on Nov. 4, 2014).

³²¹ *Contributions to U.S. Federal Candidates and Committees*, GOOGLE INC. NETPAC (Viewed on November 3, 2014), <http://bit.ly/1GhqMZL>.

³²² Monica Langley and Jessica E. Vascellaro, *Google CEO Backs Obama*, THE WALL STREET JOURNAL (October 20, 2008), <http://on.wsj.com/1nRdWpU> and Jennifer O'Mahony, *Eric Schmidt Declines Obama Cabinet Post*, THE TELEGRAPH (December 5, 2012), <http://bit.ly/1pdbt8q>.

³²³ Monica Langley and Jessica E. Vascellaro, *Google CEO Backs Obama*, THE WALL STREET JOURNAL (October 20, 2008), <http://on.wsj.com/1nRdWpU> and Jennifer O'Mahony, *Eric Schmidt Declines Obama Cabinet Post*, THE TELEGRAPH (December 5, 2012), <http://bit.ly/1pdbt8q>.

informally acts as an extension of the official Democratic Senatorial Campaign Committee.³²⁴

A study published by the Sunlight Foundation in June 2013 analyzed contributions from the top 31,385 donors, representing 1 percent of 1 percent of the U.S. population. These donors accounted for 28 percent of all disclosed political contributions in the 2012 election cycle, the Sunlight study concluded. In 2012, Google had the seventh most “1% of the 1%” donors among companies. Thirty-three Google employees on Sunlight’s list donated a total of \$1.3 million, an average of about \$41,000 each. Of the top 20 companies listed, Microsoft, ranked ninth, was the only other technology company.³²⁵

In reality, Google or its employees could be spending far more to influence elections than reported here. The expenditures listed above refer only to those that much be disclosed. But the U.S. Supreme Court’s 2010 decision in *Citizens United v. Federal Election Commission* and subsequent rulings by courts and agencies based on the *Citizens United* precedent blasted gaping holes in campaign finance laws calling for disclosure.³²⁶

Under the new regime, organizations or individuals can give unlimited contributions to nonprofit groups registered under Section 501(c) of the tax code. These groups are free to spend to influence elections and do not have to disclose their contributors. Donors’ voluntary disclosure is essentially the only way the public is able to learn about contributions to these electioneering groups. As discussed above, Google does not disclose such information, so we do not know the extent to which Google has covertly financed these groups.

³²⁴ *Center for Responsive Politics, Donor Lookup. Contributions by Schmidt, Eric, employer=Google, cycle=2014 (custom search)*, CENTER FOR RESPONSIVE POLITICS (www.opensecrets.org), (OCT. 31, 2014) <http://bit.ly/100FMOE>. and TAYLOR LINCOLN AND ADAM CROWTHER, PUBLIC CITIZEN, SUPERCONNECTED GROWING TREND OF UNREGULATED ELECTIONEERING GROUPS SERVING CANDIDATES AND PARTIES FURTHER DISPROVES SUPREME COURT’S ASSUMPTION THAT SUCH GROUPS ARE ‘INDEPENDENT’ (October 14,2014). <http://bit.ly/10an5DZ>.

³²⁵ Lee Drutman, *The Political 1% of the 1% in 2012*, SUNLIGHT FOUNDATION (June 24, 2013), <http://bit.ly/1x36Hiq>.

³²⁶ *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), <http://1.usa.gov/9Hn7y5>. *Citizens United* outlawed restrictions on the ability of outside entities, including corporations and unions, to spend money from their treasuries to make independent expenditures (expenditures expressly intended to influence the outcomes of elections). A subsequent decision by the U.S. Court of Appeals for the District of Columbia determined that limitations on the size of contributions to groups engaging in independent expenditures could not be justified in the wake of *Citizens United*. See *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010), <http://1.usa.gov/sPC9tl>. The Federal Election Commission then acquiesced by ruling that independent expenditure groups may accept unlimited contributions from corporations and unions, as well as individuals. See Federal Election Commission, Advisory Opinion 2010-11 (July 22, 2010), <http://bit.ly/lK6LUX>. The cumulative effect of these decisions was to permit outside entities to use unlimited contributions from corporations, unions and individuals to influence the outcomes of elections.

Google's 'Soft Power' Helps It to Have Its Way With Policy Makers and Other Elites

Political spending is just one way Google influences policy makers. Another is through what has been termed “soft” power.³²⁷ Through having employees enter high positions in the federal government, hosting events for elites, and funding and supporting a diverse array of non-profits, Google accrues influence in ways that are much less visible and less regulated than through conventional lobbying and electioneering expenditures.

The phenomenon of former government employees becoming lobbyist for industries and businesses is commonly called the “revolving door.” Somewhat less publicized is the “reverse revolving door,” in which industry officials take positions in the government. These positions are typically in the highest echelons of government, often for relatively short-term appointed positions.

Many of the White House's most prominent tech-related positions in recent years have been filled by former Google executives and employees. Some employees took leave from Google to work on fixing the HealthCare.gov website after the site's high-profile stumbles at its launch.³²⁸ Mikey Dickerson, whom *The New York Times* wrote was hired “to save the day” for HealthCare.gov, was later hired full time as the deputy chief information officer of the federal government and the administrator of the United States Digital Services Team, to fix the government's websites.³²⁹ In September 2014, the White House hired Google executive Megan Smith to be the next, and third ever, U.S. chief technology officer, which is the executive's information-technology policy and initiatives.³³⁰ Former Google counsel Alexander Macgillivray was hired to be her deputy CTO.³³¹

Other people revolving through both Google and the White House have included former Google Finance and Google News manager, who became White House Director of Citizen Participation Katie Jacobs Stanton; former Google head of public policy turned White House Deputy Chief Technology Officer Andrew McLaughlin, who was reprimanded for exchanging e-mails with former Google colleagues about issues under his purview, which violated the administration's ethics rules; former Google vice president and deputy general counsel turned White House privacy and intelligence advisor Nicole

³²⁷ “Soft power” as coined and described by Joseph Nye. See *Soft Power: the Means to Success in World Politics*, AMAZON (Viewed on November 3, 2014), <http://amzn.to/1phgmEm>.

³²⁸ Gregory Wallace, *Google Engineers Tapped to Revive Healthcare.Gov*, CNN (October 31, 2013), <http://money.cnn.com/2013/10/31/technology/enterprise/obamacare-site-tech-surge/>.

³²⁹ Michael D. Shear, *White House Picks Engineer From Google to Fix Sites*, THE NEW YORK TIMES (August 11, 2014), <http://www.nytimes.com/2014/08/12/us/politics/ex-google-engineer-to-lead-fix-it-team-for-government-websites.html? r=0>.

³³⁰ Nancy Scola, *White House Names Google's Megan Smith the Next Chief Technology Officer of the United States*, THE WASHINGTON POST (September 4, 2014), <http://wapo.st/1qr50fl>.

³³¹ Alistair Barr, *Two Googlers Take Top White House Tech Jobs*, THE WALL STREET JOURNAL (September 4, 2014), <http://on.wsj.com/Z8PZ7A>.

Wong; and Sonal Shah, the former head of global development at Google's philanthropic arm, who became head of the Office of Social Innovation at the White House.³³² "The White House's roster is starting to resemble Google's list of former employees" headlined a story by *Quartz* news service on the stampede of Google officials to the West Wing.

Google also has been adding to its soft power by courting influential national figures, such as by hosting an elite, unpublicized Google conference at a Sicilian resort, nicknamed by "the Davos of the summer" by a reporter for *The New York Times*. Google declined to comment to the *Times* on the exclusive summit, also known as "the Camp," which attracted executives from politically active companies like Goldman Sachs, Deutsche Bank, Spanish banking giant Santander, as well as prominent members of the media, including *Huffington Post* founder Arianna Huffington, and investors and technology luminaries.³³³

Google also earns a kind of soft political power from the nonprofits it funds through in-kind donations in the form of advertising, customized YouTube channels and website analytics, as well as funding fellowships for the groups.³³⁴ It also acts as a funder for political events across the spectrum, ranging from an event by the conservative Federalist Society event honoring Supreme Court Justice Clarence Thomas to the 2014 conference by the progressive Netroots Nation.³³⁵

Although the company does not report the amounts of money it gives to nonprofits, or, evidently, a fully comprehensive list of groups to which it contributes, it does report the identities of "some examples" of the organizations it gives to. Google's "some examples" list of 102 groups includes organizations from across the ideological and subject-area spectrum, including those that work on privacy, technology and political spending issues. [See Appendix B.]

As an example of the influence of Google's financing of nonprofits, experts from organizations it funds tend to be quoted on matters involving Google in the media without disclosure of Google's assistance to them. Google also has a policy fellowship program that funds fellow positions in at least 20 influential organizations. The organizations Google discloses as participating in the program also run the ideological

³³² Jeanne Kim, *The White House's Roster is Starting to Resemble Google's List of Former Employees*, QUARTZ (August 30, 2014), <http://bit.ly/1x3eYUO>.

³³³ William Alden, *Exclusive Google 'Camp' Draws Elite to Sicilian Resort*, THE NEW YORK TIMES (August 4, 2014), <http://nyti.ms/1qW2g6U>.

³³⁴ Tom Hamburger and Matea Gold, *Google, Once Disdainful of Lobbying, Master of Washington Influence*, THE WASHINGTON POST (April 12, 2014), <http://wapo.st/1eIXuHl>.

³³⁵ Nick Surgey, *The Googlization of the Far Right: Why is Google funding Grover Norquist, Heritage Action, and ALEC?* THE CENTER FOR MEDIA AND DEMOCRACY'S PRWATCH (November 27, 2013), <http://bit.ly/1iD3kNe> and [NN14](http://bit.ly/1mQF5Mr), NETROOTS NATION (Viewed on Nov 4, 2014), <http://bit.ly/1mQF5Mr>.

spectrum and include groups that might critique a company such as Google.³³⁶ [See Appendix C.]

“Google’s influence in Washington has chilled a necessary and overdue policy discussion about the impact of the Internet’s largest firm on the future of the Internet,” Marc Rotenberg, a Georgetown University law professor who runs the Electronic Privacy Information Center, told *The Washington Post*.³³⁷

³³⁶ *U.S. Public Policy: Transparency*, GOOGLE (Viewed on Nov. 3, 2014), <http://bit.ly/1nsEwGq>

³³⁷ Tom Hamburger and Matea Gold, *Google, Once Disdainful of Lobbying, Master of Washington Influence*, THE WASHINGTON POST (April 12, 2014), <http://wapo.st/1elXuhl>.

Conclusion

Google's growing power, ubiquity in our lives, and its ambitions to change the world make it especially worthy of our attention, especially as it amasses more information about us and becomes more engaged in the political process. The company's "About" page begins, "Google's mission is to organize the world's information and make it universally accessible and useful."³³⁸ While this motto accurately reflects Google's devotion to information collection, it belies the fact that, as the company becomes increasingly powerful, it has kept inaccessible significant information about its own practices, particularly its burgeoning political spending.

Google is collecting huge amounts of personal information about hundreds of millions of people, through increasingly diverse types of products on computers and phones, on people's bodies, in homes, schools, streets, skies and more. Meanwhile, it has become an increasingly active political player to the point that it is one of the most dominant corporations in American politics. This combination of power amassed through information collection and political activity could become dangerous if no government is able to hold accountable a company as pervasive in our lives as Google is. In the words of Wikileaks founder Julian Assange:

It's not just Google, but Google represents a push towards a technocratic imperialism or digital colonialism... While it can sound a bit strange to use these terms, that's very clear from Google's book about its vision for the future of the digital age, where Google envisages pulling in everyone, even in the deepest parts of Africa, into its system of interaction. Now that system of interaction concentrates global power into those people who already have a lot of it.... At a less geopolitical level and at a more personal level, the global erosion of privacy for the average person brings democratic states socially into a position of where they are more like authoritarian states. That's the big problem for the average person.³³⁹

On the state and federal levels, Google's political activity is increasing and being used to nullify important regulatory checks for the safety of its products while it finds more ways to collect information and to expand its markets for society-altering technology. The prospects of a company increasingly permeating our lives, and having a profit motive to collect as much information as possible about users, while spending increasing quantities of nontransparent political money, should concern supporters of democracy.

Google has collected massive amounts of information by often secretive means, and released users' personal information to the public, intelligence agencies and its staff, in

³³⁸ *About Google*, GOOGLE, (Viewed on September 11, 2014), <http://bit.ly/1whnb7G>.

³³⁹ Ryan Grim and Sarah Harvard, *Julian Assange Fires Back at Eric Schmidt and Google's "Digital Colonialism"*, HUFFINGTON POST (September 30, 2014), <http://huff.to/1yy0NvP>.

ways both intentional and not. As Google continues to develop new technologies, most of which collect information as a primary or ancillary function, there have been and will continue to be instances in which people want to put checks on this collection. The more non-transparent control Google has over the political process, the more difficult that will be.

While Google provides ostensibly free programs to hundreds of millions of people around the world, it is also amassing power in ways that are important to note. There may be no limit to the amount of information Google seeks to collect about its users, or the political activity it will undertake to protect and expand its markets, even when consumers are wary of its new technologies.

Both information collection and lobbying increase the power of this company, which openly states its ambitions to change the world. It is important to make sure that such a company is ideologically consistent when it claims to value transparency and access to information. As Google's forays into new technologies far outpace the relevance of existing regulations, Google is seizing the opportunity to influence what new regulation will look like. Citizens must ensure that new technologies are designed and regulated through open, democratic processes, not to further empower dominant entities like Google, but to protect and empower consumers.

Appendixes

Appendix A: “Representative Listing” of Trade Associations and Membership Organizations to Which Google Belongs

Associations 1 – 23 (alpha.)	Associations 24-42 (alpha.)
Ad Council	Interactive Advertising Bureau
Ads Integrity Alliance	International Advertising Association
Advertising Research Foundation	Mobile Marketing Association
American Advertising Federation	National Advertising Initiative
American Council On Renewable Energy	National Foreign Trade Council
American Legislative Exchange Council	National Cyber Security Alliance
Application Developers Alliance	New York Technology Council
Association of National Advertisers	Open Internet Coalition
Business Forward	Partnership for New York City
Coalition of Service Industries	SF Citizens Initiative for Technology & Innovation
Consumer Electronics Association	Search Engine Marketing Professionals Org.
Computer & Communications Industry Assoc.	Software & Information Industry Association
Coalition for Patent Fairness	Technology Alliance
Compete America	TechAmerica
CTIA - The Wireless Association	TechNet
Digital Due Process Coalition	Trust In Ads
Digital Media Association	The Internet Association
Direct Marketing Association	U.S. Chamber of Commerce
Engine Advocacy	U.S.-China Business Council
Internet Commerce Coalition	VON Coalition
Internet Infrastructure Coalition	Wireless Innovation Alliance
Information Technology Industry Council	

Source: Google, <http://bit.ly/1ORVljq>

Appendix B: Examples of “Third Party” Groups to Which Google Provides Support

Groups 1 – 50 (alpha.)	Groups 51-100 (alpha.)
AARP	Gay & Lesbian Victory Institute
Access Now	George Mason University Law School Law and Econ. Center
American Action Forum	Global Network Initiative
American Antitrust Institute	Global Voices
American Association of People with Disabilities	Heritage Action
American Conservative Union	Heritage Foundation
American Constitution Society for Law and Policy	Human Rights Campaign
American Council of the Blind	Information Technology and Innovation Foundation
American Enterprise Institute for Public Policy Research	International Center for Law and Economics
American Foundation for the Blind	Internet Education Foundation
American Library Association	Institute for IP and Social Justice at Howard Law School
Americans for Tax Reform	iKeepSafe
Asian American Justice Center	Joint Center for Political and Economic Studies
Asian Pacific American Institute for Congressional Studies	The Latino Coalition
APAICS Leadership Network	Leadership Conference on Civil and Human Rights
Aspen Institute	League of United Latin American Citizens
American University Program on Information Justice and IP	Mercatus Center
Boys & Girls Clubs of America	National Association for the Advancement of Colored People
The Brookings Institution	Nat'onal Assoc. of Latino Elected and Appointed Officials
California State University Northridge Foundation	National Association of the Deaf
Capital Factory	National Center for Missing & Exploited Children
CATO Institute	National Consumers League
Center for a New American Security	National Congress of American Indians
Center for American Progress Action Fund	National Council of La Raza
Center for Democracy and Technology	National Cyber Security Alliance
Center for the Rule of Law	National Federation of the Blind
Center for Strategic and International Studies	National Hispanic Media Coalition
Committee to Protect Journalists	National League of Cities
Common Sense Media	National Network to End Domestic Violence
Competitive Enterprise Institute	National Taxpayers Union
Congressional Black Caucus Foundation	National Urban League
Congressional Black Caucus Institute	New America Foundation
Congressional Hispanic Caucus Institute	Searle Center on Law, Regulation, and Economic Growth
Congressional Hispanic Leadership Institute	PEN American Center
Congressional Institute	People for the American Way
ConnectSafely	Progressive Policy Institute
Constitution Project	Public Knowledge
Consumer Action	Reporters Without Borders
Consumer Federation of America	Ripon Society
Council of Better Business Bureaus Inc.	R Street Institute
Creative Commons	Small Business Majority Foundation
Digital 4th	TDI
Electronic Frontier Foundation	TechFreedom
Engine Advoacy	Technology Policy Institute
Enough is Enough	Transparency International
Family Online Safety Institute	U.S. Black Chamber Inc.
Federalist Society	U.S. Conference of Mayors
Free State Foundation	U.S. Hispanic Chamber of Commerce
Freedom House	Washington Legal Foundation
Future of Music Coalition	Wired Safety
Future of Privacy Forum	Women's High Tech Coalition

Source: Google, <http://bit.ly/1ORVljq>

Appendix C: “Participating Organizations” in Trade Google Policy Fellowship program

Organizations 1 – 10 (alpha.)	Organizations 11-20(alpha.)
American Association of People with Disabilities	Future of Privacy Forum
American Library Association	iKeepSafe
Canadian Internet Policy & Public Interest Clinic	National Consumers League
Center for American Progress	National Hispanic Media Coalition
Center for Democracy and Technology (CDT)	New America Foundation
Citizen Lab	Progressive Policy Institute
Competitive Enterprise Institute (CEI)	Public Knowledge
Connect Safely	R Street
Electronic Frontier Foundation	TechFreedom
Future of Music Coalition	Technology Policy Institute

Source: Google, <http://bit.ly/1ORVljq>