



January 12, 2012

Honorable Jon Leibowitz, Chairman  
 Honorable William E. Kovacic, Commissioner  
 Honorable J. Thomas Rosch, Commissioner  
 Honorable Edith Ramirez, Commissioner  
 Honorable Julie Brill, Commissioner  
 The Federal Trade Commission  
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Dear Mr. Chairman and Members of the Commission:

We understand that the Federal Trade Commission is currently investigating Google for possible antitrust violations, and that this investigation is focusing on whether Google's search practices give preference to its own content over non-Google content.<sup>1</sup> Furthermore, the Commission has just finalized a consent agreement with Google that establishes new privacy safeguards for users of all Google products and services and subjects the company to independent, biennial privacy audits.<sup>2</sup>

In light of these developments, EPIC requests that the Commission review Google's recent decision to integrate its social network, Google+, into search results produced by Google search. Google's business practices raise concerns related to both competition and the implementation of the Commission's consent order.

## Introduction

EPIC is a public interest research center located in Washington, D.C. EPIC focuses on emerging privacy and civil liberties issues and is a leading consumer advocate before the FTC. EPIC has a particular interest in protecting consumer privacy, and has played a leading role in developing the authority of the FTC to address emerging privacy issues and to safeguard the privacy rights of consumers.<sup>3</sup> EPIC's 2010 complaint concerning Google Buzz provided the

<sup>1</sup> *Supporting Choice, Ensuring Economic Opportunity*, THE OFFICIAL GOOGLE BLOG (June 24, 2011), <http://googleblog.blogspot.com/2011/06/supporting-choice-ensuring-economic.html>; See also Miguel Helft, *Google Confirms FTC Antitrust Inquiry*, NY TIMES (June 24, 2011), <http://bits.blogs.nytimes.com/2011/06/24/google-confirms-f-t-c-antitrust-inquiry/>; Nina Gregory, *Is Google Playing Fair With Its Search Results?*, NPR (June 27, 2011), <http://www.npr.org/2011/06/27/137448879/ftc-searches-google-in-antitrust-investigation>.

<sup>2</sup> Google, Inc., FTC File No. 102 3136 (2011) (Consent Order), <http://ftc.gov/os/caselist/1023136/110330googlebuzzagreeorder.pdf>.

<sup>3</sup> See, e.g., Letter from EPIC Executive Director Marc Rotenberg to FTC Commissioner Christine Varney, EPIC (Dec. 14, 1995) (urging the FTC to investigate the misuse of personal information by the direct marketing industry), [http://epic.org/privacy/internet/ftc/ftc\\_letter.html](http://epic.org/privacy/internet/ftc/ftc_letter.html); DoubleClick, Inc., FTC File No. 071-0170 (2000) (Complaint and Request for Injunction, Request for Investigation and for Other Relief), [http://epic.org/privacy/internet/ftc/DCLK\\_complaint.pdf](http://epic.org/privacy/internet/ftc/DCLK_complaint.pdf); Microsoft Corporation, FTC File No. 012 3240 (2002)

basis for the Commission's investigation and October 24, 2011 subsequent settlement concerning the social networking service.<sup>4</sup> In that case, the Commission found that Google "used deceptive tactics and violated its own privacy promises to consumers when it launched [Buzz]."<sup>5</sup> The settlement prohibits the company from future privacy misrepresentations and requires it to obtain the affirmative consent of users prior to "new or additional sharing" of personal information with any third party.<sup>6</sup> The settlement also requires Google to implement a comprehensive privacy program and calls for biennial, independent privacy audits for the next 20 years.<sup>7</sup>

EPIC has also brought the Commission's attention to the issue of Google's manipulation of its search results. In September of 2011, EPIC asked the Commission to investigate Google's use of its search engine criteria to give preferential treatment to its own YouTube videos on "privacy."<sup>8</sup> EPIC explained that following Google's acquisition of YouTube, Google revised the YouTube search criteria such that Google's subjective "relevance" rankings became the default for returning search results. As a consequence, Google's own online videos on "privacy" are more likely to be ranked highly, and therefore viewed by internet users, than if the original search criteria had remained as the default. EPIC, which also makes videos concerning "privacy" available through YouTube, noted that it was specifically disadvantaged by Google's preference for its own content. Google's recent changes to its search results raise similar competitive issues.

## Background

On January 10, 2012, Google announced that it would include personal data gathered from Google+ in the results of users' searches, including photos, posts, and business pages of users and their contacts.<sup>9</sup> In addition to the personal information of a user's contacts, search will also display Google+ business pages and notable Google+ users on the right-hand column of the results page.

Google's changes implicate concerns over whether the company prioritizes its own content when returning search results. Incorporating results from Google+ into ordinary search results allows Google to promote its own social network by leveraging its dominance in the search engine market. Search Engine Land's Danny Sullivan wrote that Google's changes favor Google+ "even more than [he initially] thought," by "turn[ing] Google+ into an essential social

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(Complaint and Request for Injunction, Request for Investigation and for Other Relief), [http://epic.org/privacy/consumer/MS\\_complaint.pdf](http://epic.org/privacy/consumer/MS_complaint.pdf); Choicepoint, Inc., FTC File No. 052-3069 (2004) (Request for Investigation and for Other Relief), <http://epic.org/privacy/choicepoint/fcraltr12.16.04.html>.

<sup>4</sup> Press Release, Federal Trade Comm'n, FTC Charges Deceptive Privacy Practices in Google's Rollout of Its Buzz Social Network (Mar. 30, 2011), <http://ftc.gov/opa/2011/03/google.shtm> ("Google's data practices in connection with its launch of Google Buzz were the subject of a complaint filed with the FTC by the Electronic Privacy Information Center shortly after the service was launched.").

<sup>5</sup> *Id.*

<sup>6</sup> Google, Inc., FTC File No. No. 102 3136 (2011) (Agreement Containing Consent Order), <http://www.ftc.gov/os/caselist/1023136/110330googlebuzzagreeorder.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> Letter from EPIC to the Federal Trade Commission on Google's search preferences in YouTube (Sept. 8, 2011), [https://epic.org/privacy/ftc/google/Google\\_FTC\\_Ltr\\_09\\_08\\_11.pdf](https://epic.org/privacy/ftc/google/Google_FTC_Ltr_09_08_11.pdf).

<sup>9</sup> *Search Plus Your World*, THE OFFICIAL GOOGLE BLOG (Jan. 1, 2012 6:29 AM), <http://googleblog.blogspot.com/2012/01/search-plus-your-world.html>.

network for any search marketer.”<sup>10</sup> For example, the right-hand display of notable business and Google+ users replaces highly-visible advertising space, even for consumers who have no Google+ accounts and are not logged in to Google.<sup>11</sup>

Benjamin Edelman, professor at the Harvard Business School, wrote that “Google is favoring its own ancillary services even when other destinations are objectively superior, and Google is using its dominance in search to compel users to accept Google’s other offerings.”<sup>12</sup> He concluded by saying that “Google’s dominant position in search requires that the company hold itself to a higher level of conduct, including avoiding tying its other products to its dominant search service. Google has repeatedly crossed the line, and antitrust enforcement action is required to put a stop to these practices.”<sup>13</sup>

Furthermore, although data from a user’s Google+ contacts is not displayed publicly, Google’s changes make the personal data of users more accessible. Users might, for example, “com[e] across an unexpected photo or post from a friend, [and] might reshare it to the world” or “[t]hings that people may have forgotten sharing with others will begin to show up serendipitously through ordinary Google searches.”<sup>14</sup> James Grimmelman, an associate professor at New York Law School, said that Google’s change “breaks down a very clear conceptual divide between things that are private and things that are public online.”<sup>15</sup> Google allows users to opt out of receiving search results that include personal data, but users cannot opt out of having their information found by their Google+ contacts through Google search. In contrast, Google allows content owners to remove pages from Google’s public search results.<sup>16</sup>

### **Request for Investigation**

The Commission is conducting an investigation into Google’s business practices, specifically whether the company prioritizes its own services in search results. The Commission has also committed itself to conducting biennial audits of Google’s privacy practices.

In connection with the Commission’s investigation and audits, EPIC respectfully requests the Commission examine Google’s recent changes to Google search.

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<sup>10</sup> Danny Sullivan, *Real-Life Examples Of How Google’s “Search Plus” Pushes Google+ Over Relevancy*, SEARCH ENGINE LAND (Jan. 11, 2012 1:58PM), <http://searchengineland.com/examples-google-search-plus-drive-facebook-twitter-crazy-107554>.

<sup>11</sup> *Id.*

<sup>12</sup> *Google Tying Google Plus and Many More*, Benjamin Edelman (Jan. 12, 2012), <http://www.benedelman.org/news/011212-1.html>.

<sup>13</sup> *Id.*

<sup>14</sup> Danny Sullivan, *Google’s Results Get More Personal With “Search Plus Your World”*, SEARCH ENGINE LAND (Jan. 10, 2012 9:30AM), <http://searchengineland.com/googles-results-get-more-personal-with-search-plus-your-world-107285>.

<sup>15</sup> Nick Bilton, *Google’s Social Move Attracts Critics*, BITS (Jan. 10, 2012), <http://bits.blogs.nytimes.com/2012/01/10/google-backlash-after-new-google-search-integration/>.

<sup>16</sup> Vanessa Fox, *Removing Pages From Google: A Comprehensive Guide For Content Owners*, SEARCH ENGINE LAND (Nov. 8, 2010), <http://searchengineland.com/removing-pages-from-google-53086>.

Sincerely,



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Representative Bob Goodlatte, Chairman  
House Judiciary Subcommittee on Intellectual Property, Competition, and the Internet

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