



Testimony of Jason Kint
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Before the
Senate Committee on the Judiciary
Subcommittee on Antitrust Competition, Policy and Consumer Rights

Big Fixes for Big Tech

April 1, 2025

Thank you, Chairman Lee, Ranking Member Booker and members of the Subcommittee. My name is Jason Kint and I am the CEO of Digital Content Next (DCN). DCN is the only trade organization dedicated to serving high-quality digital content companies that manage trusted, direct relationships with both consumers and advertisers. Our membership includes more than 60 media companies and thousands of brands from every segment of the market, from large

to mid-sized companies some who have been around less than a decade while others more than a century - all creating original news and entertainment delivered over the Internet. Our members include The Wall Street Journal, Fox News, The New York Times, Washington Post, Paramount, Vox Media Group, the Financial Times, TelevisaUnivision and Major League Baseball¹. As background, I spent the first twenty years of my career running digital media businesses beginning with the advent of the web.

Our DCN members create trusted, original content. While they may have different legacies, they are all focused on creating and monetizing this content over the Internet. As a result, our publisher members rely heavily on the big tech companies for discovery and monetization of their content, cultivating new audiences and managing relationships with consumers.

I want to recognize the strong bipartisan leadership here. Senators Blumenthal and Blackburn have done important work on kids' online safety. Senator Hawley has been a consistent voice on market power. Senator Klobuchar has fought relentlessly to restore competition. And Senator Moody, when she was AG in

¹ <https://digitalcontentnext.org/membership/members/>

Florida, helped lead the charge on antitrust enforcement. I remember being captured by Senator Moody's remarks at the press conference on the steps of the Supreme Court on the day of the filing of the landmark case against Google.

Our members have significant issues with how big tech companies abuse their dominant positions in the marketplace. And I am happy to answer any questions you have about any of those companies. But, today, I'd like to talk about our concerns with the digital advertising marketplace. Publishers' content is funded primarily through advertising. Nearly 80% of the digital revenues for our membership is derived from advertising according to their own reported numbers. Yet while advertising is woven into everyone's digital lives and provides significant funding for investment in content, news and entertainment, most people have only a vague idea of how it works in the digital world including how closely its plumbing has grown to resemble a stock exchange.

In barely three decades, digital advertising has quickly evolved into a high-speed marketplace in which myriad pricing, placement, targeting, and auction levers are pulled in milliseconds, as we go about our digital and physical lives. This is now the largest advertising market, trading more than \$200 billion of advertising per year in the US - executed in real-time almost entirely by machines.

Like in the financial markets, brokers buy or sell on behalf of clients. To guard against fraud in the stock exchange, Congress enacted common sense rules nearly a century ago. These rules prohibit the biggest companies from operating on both sides of the market. These rules also require transparency and impose a duty on brokers to get the best deal for their client. In short, these are rules which every American can understand and support.

Unfortunately, there are no common-sense rules for the digital advertising marketplace. As a result, the supply chain is murky and rampant with fraud, insider trading and hidden fees. Ad tech companies often arbitrage users' data to use on behalf of other clients and for their own profits.

Google, the most dominant company in the digital advertising marketplace, enjoys a stranglehold² over this entire supply chain since they offer the most popular software for advertisers buying ads, the most popular software for publishers³ selling ads and the most dominant exchange where bids are placed and winners are chosen. And it's not just theory. In court documents, Google compared itself to

² <https://www.justice.gov/atr/media/1366836/dl>

³ <https://www.justice.gov/atr/media/1368486/dl>

Goldman Sachs owning the New York Stock Exchange. They weren't even hiding it.

Google's dominant position is so problematic that a bipartisan group of State Attorneys General filed suit⁴ to end this monopoly. Under the first Trump Administration, the Department of Justice began investigating Google's dominance in the ad tech marketplace and a suit was ultimately filed shortly after President Trump left office. That case was argued last fall and we are currently awaiting the judgment from Judge Brinkema in the Eastern District of Virginia.

We've seen evidence that Google gave themselves secret "last look" advantages, rigged auctions to hit profit targets, and shifted revenue shares and auctions without warning - even calling it, quote, "shaking the cushions" in order to make their quarterly earnings. Google's global managing director of publisher platforms even admitted that their high capture of publishers' revenue⁵ ("Take Rate") only happens, not because of value to publishers but, because of their unique role on the

⁴ <https://www.texasattorneygeneral.gov/news/releases/paxton-files-third-amendment-antitrust-lawsuit-against-google>

⁵ <https://www.justice.gov/atr/media/1369251/dl>

buy side of the auctions.⁶ I can't think of a better testimonial for the A.M.E.R.I.C.A. Act.

Evidence presented to the courts from Google's internal documents have included the following alleged manipulations of advertising auctions:

- Project Bernanke: Google allegedly used historical bid data from its ad buying platform to give itself an advantage in auctions - unbeknownst to publishers by charging advertisers using the second highest bid, paying the publisher based on the third highest bid and "reinvesting" the difference.
- Project Global Bernanke: A later version of Bernanke that expanded manipulation allowing for the reinvestment to be moved from one publisher to another - further increasing Google's revenue and market share at the expense of individual publishers.
- Project Poirot: Designed to suppress the growth of "header bidding" by lowering bids on rival exchanges, a competitive threat that allowed publishers to bypass Google's own ad exchange.
- Project Jedi Blue: A deal between Google and Facebook (Meta) to ensure they would participate in Google's auctions and help kill header bidding in exchange

⁶ <https://www.justice.gov/atr/media/1367941/dl>

for preferential treatment - including “last look” capabilities and timing advantages.

- Dynamic Revenue Share (DRS): Google lowered the revenue share it charged publishers on the fly depending on competition in each auction – allowing it to win more auctions.
- Dynamic Revenue Share 2 (DRS2): Google kept a tally of the lost revenue share from DRS by publisher and then increased its revenue share in auctions with less competition in order to pay itself back.
- Reserve Price Optimization (RPO): Google adjusted reserve prices in real time to maximize its own revenue - impacting auction fairness while keeping publishers and buyers in the dark.⁷
- Last Look Advantage: Enabled Google to see other bids and then decide whether to outbid the highest one - giving itself an unfair edge in real-time auctions.⁸

These are just a few of the examples of conduct and market manipulation alleged in the US v Google Ad tech antitrust trial in Virginia last fall. It’s also been documented in all of Google’s antitrust trials across five different district courts (N.D. Cal., D.D.C., E.D. Tex., E.D. Va., and the S.D.N.Y.) that the public will

⁷ <https://www.justice.gov/atr/media/1367276/dl>

⁸ <https://www.justice.gov/atr/media/1366856/dl>

never see all of the evidence as it no longer exists. When the DOJ and state AGs started asking questions, Google continued to purge relevant internal chat messages. That's not just concerning - it's outrageous. And that's why Judge Donato sanctioned them during the N.D. Cal. trial.⁹

Google has already been found liable for search ad monopoly abuse. And they lost their app store case to a unanimous jury in California. So this isn't speculation. It's now on the record. And meanwhile, local news outlets and publishers have been suffocating under this system for more than a decade.

Digital advertising is a critical driver for our economy. That's why DCN wholeheartedly supports the A.M.E.R.I.C.A. Act¹⁰ which was introduced by Senator Lee and co-sponsored by many of the Senators here today. The bill would require transparency, promote competition, reduce obvious conflicts of interest, and stop market abuses by the most dominant companies. The bill lays out basic, common-sense rules for the digital advertising marketplace that once again all Americans can understand and support.

⁹ <https://www.reuters.com/legal/us-court-sanctions-google-deleting-evidence-antitrust-cases-2023-03-29/>

¹⁰ <https://digitalcontentnext.org/blog/press/digital-content-next-endorses-bi-partisan-america-act-to-protect-trust-in-online-advertising/>

As Senator Lee previously said, “This is not a bill that’s either liberal or conservative, it’s not Republican or Democratic, this is just a good business process bill.”¹¹ We agree and applaud your work on behalf of the free and local press, small and large, old and new. I urge this committee to pass the A.M.E.R.I.C.A. Act so that consumers and businesses will benefit from a healthy digital advertising marketplace.

At the same time, it’s critical we do not overlook the other anticompetitive behavior that impacts both publishers and end consumers. The FTC’s trial against Meta begins in two weeks¹², aiming to unwind Facebook’s acquisitions of Instagram and WhatsApp. And the Department of Justice filed a major antitrust case against Apple¹³ last year for abusing its App Store control. We are finally seeing movement - but these things years to resolve in the courts. The Meta case just now going to trial was originally filed by the Trump administration – in 2020.¹⁴

That’s why we need Congress to act now - to bring some urgency and fairness into this market. The A.M.E.R.I.C.A. Act is a first, vital step to make sure the most

¹¹ <https://digiday.com/media/the-america-act-spotlights-capitol-hills-ingrained-antipathy-for-big-tech/>

¹² <https://www.bloomberg.com/news/articles/2024-11-25/ftc-meta-face-april-14-trial-over-suit-to-break-up-company>

¹³ <https://www.justice.gov/archives/opa/pr/justice-department-sues-apple-monopolizing-smartphone-markets>

¹⁴ <https://www.ftc.gov/news-events/news/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization>

powerful players follow basic rules. That will give real businesses a shot - and help quality journalism not just survive but thrive.

Thank you for inviting me to testify today and I look forward to answering any questions you have.