



**Un-Googleing The News  
Interview with Paul Sweeting**

**For podcast release  
Monday, February 20, 2023**

**KENNEALLY:** An antitrust lawsuit filed against Google in February by the US Department of Justice and attorneys-general in eight states does not mention either copyright or the news profession. Content creators and the media, though, have reason to see the case as an important new front in a two-decade-long battle with digital platforms.

Welcome to CCC's podcast series. I'm Christopher Kenneally for Velocity of Content.

Competition in the marketplace, of course, is the principal concern DOJ has in antitrust matters. When a monopoly controls a particular market, it can bar entry to competitors and set artificially high prices. The latest DOJ case against Google alleges that the search engine titan does exactly that in the \$250 billion US digital advertising space.

Industry analyst Paul Sweeting has written that the government's decision to make an antitrust example of Google may release the tech company's tight grip on ad spend and give publishers, especially news publishers, a chance at online survival. Paul Sweeting with rightstech.com joins me now. Welcome back to the program, Paul.

**SWEETING:** Thanks, Chris. Good to be here again.

**KENNEALLY:** It is good to have you join us. Tell us about these DOJ allegations. How exactly does the Department of Justice say that Google controls both the buy side and the sell side of digital advertising, and why does the complaint view publishers as the injured parties?

**SWEETING:** Well, the case essentially makes reference to the beginning of Google's behavior here, when it acquired an ad tech – a digital advertising technology company called DoubleClick, which is widely used to purchase ad space on digital platforms. They also own what has become the dominant technology platform for publishers to sell digital advertising space on their websites. And in addition, Google owns a dominant ad exchange, which is the platform where sales are actually transacted.

So there are sort of three steps in the digital advertising technology stack, as they call it. There's the buy side platform. There's the sell side platform. And in between, there's the exchange platform. Google has maneuvered itself into a position where it is the dominant



or one dominant player within each of those steps or each of those parts of the equation. So the Justice Department is alleging that it has used that position to effectively freeze out competition in any one of them. If you are a buyer of ads, and you want to reach the most desirable websites, you effectively have to go through Google. And the reverse is true for publishers. If you want the advertisers who are spending the most money, you have to go through Google.

People have looked at this in other jurisdictions – in Europe, for instance. There are also eight states that have joined the Justice Department in this litigation.

What I think makes the Google case particularly interesting from a copyright point of view is that if you read through the complaint filed by the Justice Department with the court, they really describe the injured party in that – what they allege is a monopolistic control – the injured party they're concerned about are publishers. Their basic premise is that publishers make less money because Google controls the money flow both into and out of the ad tech space. Publishers then are constrained in their resources, because advertising is one of the main – and in many cases, the sole – means of monetization that publishers have online. Again, according to the complaint, Google is taking as much as 30% or more of every dollar that gets transacted in there. That's a lot of money that is not going to publishers.

And we've all seen what's happened with news publishers particularly. It's been a tremendous loss of particularly local news outlets who don't have the reach and scale to effectively deploy a paywall. So they're particularly dependent on advertising dollars. If Google is scraping off a big enough chunk of those dollars, that's harming consumers as well, because consumers are getting – again, this is the allegation – that consumers are getting access to fewer news sources, because publishers simply cannot sustain their business.

**KENNEALLY:** Paul Sweeting, there are other aspects of this that affect consumers like you and me, the readers of published content online. When publishers are essentially hostage to Google and other online platforms for revenue, what's the experience on our end?

**SWEETING:** From the consumer's point of view, the biggest impact is you have fewer viable news sources to choose from. That may seem a bizarre sort of statement to make when you're talking about the World Wide Web, when you're overwhelmed with content, but a good amount of that content is not being professionally produced. It's being produced without the sort of fact-checking and multi-sourcing and verification and credibility that goes along with a professional publishing operation. So the impact on consumers is both less credible information and more – I don't want to say not credible, but perhaps dubious



information available to you. You could argue, and the Justice Department does, that that's a net loss to the society.

**KENNEALLY:** Paul Sweeting, publishers have battled Google directly themselves in the so-called Google Books case, which was originally brought in 2005 and ultimately ended in Google's favor in 2016. Why do you think antitrust arguments are replacing copyright infringement allegations in 2023?

**SWEETING:** I'm not sure that there's any organized or self-conscious effort to do that, but I do think you've seen a number of cases where it's sort of played out that way. This is not the first DOJ action in this space. Not very long ago, they moved successfully to block Penguin Random House's proposed acquisition of Simon & Schuster, which would have reduced the so-called big five trade publishing houses to four. Again, the DOJ's argument was that the injured party there was not other publishers, necessarily. It was authors – that the acquisition would have furthered the creation of what's called a monopsony, which is sort of the flip side of a monopoly, where you have a dominant buyer who is able to essentially dictate what it will pay to sellers.

But DOJ argued that the advances that authors would be able to gain, to demand from publishers, would go down, because there'd be fewer buyers in the market, and one in particular – a merged PRH and S&S – would be half the market or more.

It goes to something that I've always believed – and I don't think I'm alone in this belief – that from the beginning, when copyright owners were first confronted by the internet, and particularly the rise of large platforms like Google, which owns YouTube, Facebook, and others, they have long complained that their content is being used without authorization or in fashions that they don't approve of without being licensed to do so, as would normally be the case if you were making use of somebody else's intellectual property. You would need to license that and presumably pay them for that. That's what copyright guarantees – or at least promises, I guess, would be the better word – to creators, is that you would have this collection of exclusive rights and the ability to license them to other people to make use of your intellectual property.

For most of the history of copyright, value was based on the exclusive control of scarce content. I made this. I own it. If you want it, you have to come to me. I'm going to capture the value, or at least a reasonable share of the value, of any transaction.

Today, there's no such thing as scarcity in a digital environment. Any file can be copied indefinitely in an infinite number. So control of exclusive content is not really a lever for capturing – I'm mixing my metaphors there, I suppose – the value of transactions. The value flows to whoever controls the audience, because now, the content needs the



audience, not the other way around. So creators and rights owners have faced this problem of value capture. The value is being created on digital platforms. It's just not flowing to the creators or to the rights owners. It's flowing to the folks who control the platforms.

The problem is how do you arrange things so that they have the leverage, the basic competitive positioning, to be able to claim their share of the value? To a large degree, in my view, the problem that rights owners and creators have had online is sort of structural and competition-related, not entirely a function of or a problem of copyright enforcement.

In this country, you've seen organizations representing publishers, such as the News Media Alliance, beginning to bring the competitive analysis to the fore. They have been pushing a piece of legislation for the last few years called the Journalism Competition and Protection Act, or JCPA, which would create a temporary exception from antitrust law to allow news publishers to essentially bargain – negotiate collectively with platform providers in order to establish licensing and payment terms for the use of their content. They've sort of come around to the view that their problem is an antitrust problem or a competition problem as much as it is a copyright infringement problem.

**KENNEALLY:** Paul Sweeting, you mentioned the News Media Alliance. They were the major drivers in Congress to pass the Journalism Competition and Protection Act, which in the last session came very close, but ultimately did not make it across the line. Now that the Republicans are in charge in the House, what are the chances the JCPA will move forward?

**SWEETING:** I think it's unlikely that anything's going to happen in this Congress for the next couple of years, having nothing to do with the JCPA or any other particular legislation. We have divided rule now in Congress, and that just makes everything much more difficult. But I don't think that it breaks entirely along traditional partisan lines. For one thing, Republicans have been quite critical of some of the big tech players. They're doing this somewhat crazy, fatuous – can I say that – oversight process around Twitter. So they're not necessarily the biggest fans of the big tech companies. And the JCPA is basically aimed at applying leverage against the big tech platforms. So I don't think it's apt to break exclusively on partisan lines, although as I said at the top, I wouldn't be optimistic about any piece of legislation other than Defense Department funding getting through the current Congress.

**KENNEALLY:** All right. Well, Paul Sweeting with rightstech.com, thanks so much for joining me today.

**SWEETING:** Thank you, Chris. Good to be here.



KENNEALLY: That's all for now. Our producer is Jeremy Brieske of Burst Marketing. You can subscribe to our program wherever you go for podcasts, and please do follow us on Twitter and on Facebook. You can also find Velocity of Content on YouTube as part of the CCC channel. I'm Christopher Kenneally. Thanks for joining me.

END OF FILE