

May 28, 2024

The Honorable Jonathan Kanter
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Assistant Attorney General Kanter and Chair Khan:

I write to express News/Media Alliance's ("N/MA") concerns regarding Google's misappropriation of digital publishers' content to power its generative artificial intelligence ("GAI") products to enhance its monopoly power. Google is already known as the world's dominant search engine, and the Department of Justice ("DOJ") showed at trial how Google illegally monopolized that market. Now, Google is abusing its power in search to use publishers' content - without payment or permission - to power Google AI Overviews and its other GAI products to exclude competition. It is critical that the DOJ and Federal Trade Commission ("FTC") act now to stop Google's anticompetitive conduct before the effects become irreversible.

Google has a history of flagrantly misappropriating publishers' content on its search results pages, as illustrated by the FTC's 2012 investigation into Google's scraping practices¹. It has steadily introduced more and more detailed "snippets" of publishers' content, until it reached the point of misappropriation. Not only has this misappropriation protected Google's monopoly in search, it has also starved publishers of traffic by eliminating consumers' incentive to click-through to view publishers' content. Google has transformed itself into a walled garden monopolizing users' attention to the detriment of content providers who compete with Google for audiences and advertisers.

Google has now announced plans to deploy its GAI products nationwide. The prominent placement of AI Overviews at the top of Google's search results page will reduce click through to publishers' websites even further and thus further strengthen Google's monopoly. Google's AI Overviews will significantly reduce publishers' ability to monetize their content through advertising, subscriptions, and affiliate links, and instead drive that monetization directly to Google. Reports estimate that Google's GAI products will

¹ See e.g., Jack Nicas, *Google Rival Yelp Claims Search Giant Broke Promise Made to Regulators*, THE WALL STREET JOURNAL (Sept. 11, 2017), <https://www.wsj.com/articles/google-rival-yelp-claims-search-giant-broke-promise-made-to-regulators-1505167498>.



reduce the traffic of sites Google competes with for advertisers and audiences by 64 percent.² One study estimates that Google’s integration of AI Overviews and search will result in 90 percent of search queries never leaving Google’s search result page.³ As a result, AI Overviews will further entrench Google’s monopoly power while starving digital publishers of monetization opportunities to fund high-quality, original content. Google’s conduct will have profound anticompetitive effects, by reducing or eliminating entirely the incentive of publishers to develop, create and publish new content, only to see Google use its monopoly power to misappropriate that content and pass it off as its own, with the effect of further enhancing Google’s entrenched monopoly power. Potential entrants who see that Google can simply misappropriate their differentiated content to enhance Google’s product while demoting their own will lack either the ability or the incentive to invest in creating competition to Google.

In a competitive market, publishers can compete with Google for traffic and advertisers on the strength of their respective content. But Google has the requisite power to prevent this healthy competition by using its search monopoly to gain access to publishers’ content that allows it to keep traffic on Google and off publishers’ sites. The only way for publishers to opt out of AI Overviews (*i.e.*, Google’s GAI) and stop Google’s monopolistic practice is to effectively opt out of search distribution, which is not a viable option for publishers. Accordingly, no practical solutions exist for publishers seeking to protect their original content from Google’s misappropriation. Google’s search monopoly thus allows it to force publishers to give up their content for use in Google’s GAI products if publishers do not wish that content to become effectively invisible to large swaths of readers—precisely the sort of anticompetitive conduct that Google committed to ending following the FTC’s 2012 scraping investigation.⁴

Recent actions suggest that Google continues to exploit its access to publisher content while implementing actions that undermine publishers’ ability to monetize their content on their own websites that compete with Google. One week before widely releasing AI Overviews, Google adjusted its ranking algorithm to de-rank, and in some instances delist entirely, portions of publishers’ websites providing coupons and other promotional material, which provide important revenue streams for publishers. In an ostensible effort intended to reduce “spam” from its search results pages, Google updated its spam policy to derank so-called third-party pages included on a first party site with little oversight or involvement, where the purpose is to manipulate search rankings.⁵ The updated policy

² Gilad David Maayan, *How Google SGE will impact your traffic – and 3 SGE recovery case studies*, SEARCH ENGINE LAND (Sept. 5, 2023), <https://searchengineland.com/how-google-sge-will-impact-your-traffic-and-3-sge-recovery-case-studies-431430>.

³ Omer Leibenzon, *Study Reveals: SGE Threatens 90% of Google’s Top Searches*, ANGORA MEDIA (Mar. 31, 2024), <https://www.angoramedia.com/blog/study-google-sge-impact-brands>.

⁴ See Fed. Trade Comm’n, File No. 111-0163, Statement of the Fed. Trade Comm’n Regarding Google’s Search (Jan. 3, 2013) (“The Commission also investigated allegations that Google had unfairly ‘scraped,’ or misappropriated, the content of certain competing websites, passed this content off as its own, and then threatened to delist these rivals entirely from Google’s search results when they protested the misappropriation of their content. The Commission considered whether this conduct could have diminished the incentive of Google’s rivals to invest in bringing new and innovative content and services to the Internet in the future or reduced Google’s own incentive to innovate in the relevant markets, and if so whether this conduct was actionable as an unfair method of competition within the meaning of Section 5 of the FTC Act, 15 U.S.C. § 45. Chairman Leibowitz, Commissioner Brill and Commissioner Ramirez found the record evidence to support strong concerns about Google’s conduct in this regard, and Google has committed to refrain from this conduct in the future.”).

⁵ *Spam Policies for Google Web Search*, GOOGLE SEARCH CENTRAL, <https://developers.google.com/search/docs/essentials/spam-policies> (last accessed May 10, 2024); for announcement, see *Site Reputation Abuse*, GOOGLE

makes exceptions for “coupons that are listed with close involvement of the hosting site” and “[e]mbedding third-party ad units throughout a page or using affiliate links throughout a page,” which *should* have protected publishers offering promotional content.⁶ But in practice, Google’s implementation of the policy – by fiat, without notice or opportunity to cure – has not followed its own exceptions and had the practical impact of eliminating access to publishers’ own pages carrying promotional material.⁷ These changes hurt publishers, readers, and retailers alike. And this change came without meaningful opportunity for redress: already Google has cursorily rejected one publisher’s request for reinstatement, providing no real justification or context.

Adding insult to injury, AI Overviews almost immediately began showing promo codes in response to some queries, even as it delisted rival publishers’ coupon sites offering identical types of promotions.⁸ Delisting trusted publisher pages as part of a policy update is the most recent example of how AI Overviews, instead of competing on the merits of its product, starves its publishers of valuable revenue streams and reserves third-party monetization opportunities for itself.

Google’s misappropriation of publishers’ content and its undermining of publishers’ monetization opportunities are not competition on the merits. They are yet another example of Google restricting competition for its own benefit. Agency intervention is necessary to stop the existential threat Google poses to original content creators. Accordingly, we ask the DOJ and FTC to use their authority under Section 2 of the Sherman Act, and Section 5 of the FTC Act to stop Google’s latest expansion of AI Overviews, investigate its monopolistic misappropriation of publishers’ content, and take necessary action to end Google’s abusive conduct. Thank you for your prompt attention to this matter.

Sincerely,



Danielle Coffey
President & CEO
News/Media Alliance

SEARCH CENTRAL, <https://developers.google.com/search/blog/2024/03/core-update-spam-policies#site-reputation> (last accessed May 28, 2024).

⁶ *Spam Policies for Google Web Search*, GOOGLE SEARCH CENTRAL, <https://developers.google.com/search/docs/essentials/spam-policies> (last accessed May 28, 2024).

⁷ As detailed in the attached document detailing the effects of this policy change, pages affected included coupon and promotional pages, and sports betting, lottery, and gaming content.

⁸ See, e.g., Kristi Hines (@kristileilani), X (May 7, 2024, 1:42 PM), <https://twitter.com/kristileilani/status/1787900932107419968>.

News/Media Alliance Calls on Google to Abandon Ill-Advised Changes to Site Reputation Abuse Policy

On May 5, 2024, Google implemented its new site reputation abuse policy that is already reaping significant harmful effects on news, magazine, and digital publishers. This policy has amounted to wholesale deranking or deindexing whole sections of publisher properties, effectively removing publishers' coupon and affiliate link pages, and sports, lottery, and gaming content from Google Search results. Given Google's stranglehold on Search, the new policy drains publishers of important revenue streams that fund investments in high-quality journalism, harms consumer and retailers reliant upon trusted sources of promotions, and effectively restricts users trying to access news content around sports betting, iGaming, lottery, and similar topics.

Buried in a routine update, in March 2024 Google announced a new policy that reads, in relevant part:

Site reputation abuse is when third-party pages are published with little or no first-party oversight or involvement, where the purpose is to manipulate Search rankings by taking advantage of the first-party site's ranking signals. Such third-party pages include sponsored, advertising, partner, or other third-party pages that are typically independent of a host site's main purpose or produced without close oversight or involvement of the host site, and provide little to no value to users.

The policy, however, was adopted without any effective consultations with publishers and applied to derank or delist whole sections that are in fact closely edited and monitored by the publisher. The decision to block access to local newspaper sites was not an accident; Google has acknowledged that the selection of the affected sections was manual and not algorithmic.

Google Must Redraft Its Disruptive Policy Changes in Consultation with Publishers

Despite the policy's significant and disruptive effect on publishers of high-quality, curated content, Google did not engage in any meaningful consultations with newspaper, magazine, and digital media publishers prior to the adoption and implementation of the policy.

While the policy could be read as including exceptions that cover longstanding forms of content published by legitimate publishers who are not aiming to manipulate search results in a malicious manner, it has not been applied in that manner. The manual enforcement of the rules were broad-stroked and unpredictable, capturing properties by trusted, established publishers who invest considerable oversight and resources in curating the content they publish on their sites. The affected sites include *Los Angeles Times*, with full time staff dedicated to selecting promotion codes, *USA Today*, a trusted brand that exercises oversight over its couponing material and has been publishing them since 1982, and several local journalism mastheads that had been diligently growing reader interest, and monetization capabilities, from their local sporting, iGaming, and lottery promotional content.

1 Spam Policies for Google Web Search, Google Search Central, <https://developers.google.com/search/docs/essentials/spam-policies> (last accessed May 20, 2024).

2 Barry Schwartz, Google Begins Enforcement of Site Reputation Abuse Policy with Portions of Sites Being Delisted, Search Engine Land (May 6, 2024), <https://searchengineland.com/google-begins-enforcement-of-site-reputation-abuse-policy-with-portions-of-sites-being-delisted-440294>



As a result, Google's unilateral policy penalizes legitimate content and threatens the revenue of publishers of trustworthy online content, in direct contravention of Google's own stated aims. Google must work with publishers to revise its policy and implementation strategy and allow publishers to continue to serve the public and businesses in their communities.

The Public Relies on Publisher Coupons, Lottery, iGaming, and Sports Betting Content

N/MA's members have been publishing coupons and sharing promotional material for much longer than Google has existed. Newspapers and magazines have regularly included coupons in their publications for the past century. Such promotions form an important part of our community lives, providing local businesses an efficient and trusted way to attract new and retain existing customers, while helping families ease their financial burden – particularly during the cost of living crisis.

Meanwhile, with the proliferation of lotteries and legalized sports and iGaming betting, readers are becoming increasingly interested in sources that report the results timely and accurately. Publishers have responded to this demand by making this content available online as part of the digital transformation, in turn unlocking a vital revenue stream for local journalism providers especially.

Content like these have simply become part of the bargain between readers, publishers, and local businesses. It is a mutually beneficial process – with no detrimental quality to the search experience or quality – that Google's unilateral actions are threatening to eradicate.

Google's Actions Harm Consumers and Worsens User Experience

Google is engaging in unfair, anticompetitive conduct that hurts the publishing industry and consumer experience. While delisting or deindexing publishers' coupon, sports betting, iGaming, and lottery-related properties pursuant to its new policy, Google is still providing the information on the same subjects to consumers, either by providing direct answers in its own walled garden or linking to other sites that have not been delisted or deindexed. The removal of publisher properties from Search is exacerbated by Google's generative artificial intelligence (AI) products which are prominently placed above search results and replace the need for users to visit publisher sites in the first place, regardless of the particular topic or ranking status of the publisher website. Whether a publisher site is affected by the spam policy changes or not, Google's AI products threaten publishers' ability to monetize their content, including through affiliate links, on sites ranging from coupons to product reviews, that provide an important revenue stream for many publishers. Google's conduct therefore has allowed it to further drive third-party monetization towards itself, and away from publishers. Additionally, the promotional information provided by Google is less reliable, including low-quality sites that provide expired, spam, and fraudulent codes or promotional offers. In result, consumers can no longer access the information they need and want, and publishers are unable to provide a service they have spent years building, all the while Google entrenches the market dominant position of its own services.

Spam Policy Change Is Yet Another Example of Google's Market Abusive Business Practices

Google's unilateral change, adopted without any consultations with the affected publishers, is yet another example in a long line of anticompetitive and market abusive practices that harm not only publishers but the creative sector and the online ecosystem as a whole.

Over the years, Google has flagrantly misappropriated publishers' content in various ways – ranging from Google News to Featured Snippets, Top Stories, and People Also Ask – that all effectively republish high-quality content that publishers spend considerable time and resources to create.



More recently, Google, have misappropriated publisher content to train AI models now integrated into Search, aiming to provide users with responses that effectively eliminate the need to visit the original publisher content and website altogether. Such practices protect Google's primary monopoly in search while allowing Google to further encroach in the digital publishing market.

The end result is unsustainable and presents an existential threat to high-quality newspaper, magazine, and digital publishing in the United States. This latest iteration of an anti-spam policy is an overreach that eradicates years of investment, brand and relationship building, and vital revenue streams for publishers of all sizes. Its formulation and enforcement is an affront to publishers who have no option but to comply with Google's dictates while providing important services that their communities and readers rely on.