

Law 897: Theresa D'Andrea's Assignment for November 15th
Google: An Application of Antitrust Laws in the Digital Age

I. Introduction to Antitrust Laws

If you have not taken an antitrust law course, become familiar with the FTC Guide to Antitrust Laws, available through the links starting [here](#) and in this [PDF](#) (read pages 1 to 9, 23 to top of 33, skim 35-39). It is not illegal for a company to have a monopoly, which means that obtaining a monopoly through superior products, innovation, and technology is legal. Instead, monopolization is defined as market power plus exclusionary or predatory acts without a legitimate business justification (as described in the FTC Guidelines).

Read this article, [Tech Revolution Spurs Debate over Antitrust Law](#), which questions if antitrust laws are outdated and then read the FTC's [statement](#), reiterating that antitrust laws are still relevant and applicable to companies in the digital age.

II. Technological background: How does Google's search engine work?

- For background on search engines, read Eric Goldman's [article](#), "Search Engine Bias and the Demise of Search Engine Utopianism," 8 YALE J.L. & TECH 188 (2006).
- Read the New York Times op-ed article, "[The Google Algorithm](#)."
- Google's algorithm appears elusive, but Google has attempted to answer how the search engine & rankings work in its Blog. What do you think of these answers?
 - How does Google's search engine work? [Answer](#).
 - How do Google's rankings work? [Answer](#).
 - Optional: If time allows, watch Google explain how its search engine works in this [video](#).

III. Google has the market power...

As of December 2009, Google [surpassed](#) 72% of the US market shares of search engines. The number is as high as 85% of global market shares. According to the FTC Guidelines, a company that holds over 50% of the market shares has a monopoly.

But how does this violate antitrust laws?

The following are examples of how Google has violated or could violate antitrust laws:

(1) Mergers that create a dominant percentage of the market share violate antitrust laws by keeping out competitors:

- In 2008, Yahoo! and Google wanted to form an advertising agreement, but the Department of Justice threatened to file an antitrust suit. Read the DOJ's [statement](#).
- In contrast, after an eight month investigation, the FTC finally approved the merger between Google and DoubleClick. Read the FTC's [statement](#). Also read pages 1-9 of the [Dissenting Statement of Commissioner](#). Which statement do you agree with?

(2) Is Google using its search engine market dominance to leverage itself into other fields?

If so, this violates antitrust laws. In July 2010, Google purchased ITA software for \$700 million. ITA software writes the travel search engine code that travel companies like Kayak.com uses to compare flight prices. Read this [article](#). Is this an example of Google leveraging its search engine

dominance into the travel industry generally or the travel search industry specifically? Fairsearch.org thinks that this agreement is anticompetitive. Read this [article](#).

(3) Do Google's search engine results exclude rival vertical search engines in order to maintain its monopoly of search advertisers?

In 2007, Google released its "Universal Search" engine. Read this [article](#) which describes how "Universal Search" works. Watch this [video](#) for a further explanation.

- If Google is searching its own information, then how can this violate antitrust laws?
 - Read this [Complaint](#) in *TradeComet.com v. Google*, 1:09cv1400 (SDNY), filed on February 17, 2009. Another copy of the complaint is [here](#). Note: this case was recently dismissed without prejudice for improper venue & it is anticipated that it will be filed in California.
 - Also read this [article](#) about myTriggers.com's recent lawsuit against Google.
 - Optional: Read this [blog](#) entry by Eric Goldman about TradeComet & other civil lawsuits.

(4) Does Google apply discriminatory penalties against competitors in its search results?

Remember, it is not clear how Google's search engine algorithm works as it is Google's trade secret.

- In February 2010, the European Union opened a preliminary investigation of Google, exploring the claim that Google applies discriminatory penalties against competitors to favor its own products and services. Read this [article](#).
- Foundem, a UK-based technology company, also has [filed](#) these comments with the Federal Communications Commission. Foundem has called for search neutrality, where transparency and non-discrimination should apply to search engines. Read Foundem's [argument](#) and also read Google's CEO Eric Schmidt's [response](#).
- In September 2010, the Texas Attorney General opened a preliminary investigation against Google. [Optional: read the following [article](#).]
- Read this [article](#) which claims that Google is not violating antitrust laws.

Important questions to consider: *Who are Google's competitors? What is Google's product? If Google's product is both its search engine & search advertisements, then how can Foundem's search neutrality resolve Google's antitrust claims?*

- To give us insight on whom Google views as its competitors, read this [article](#) discussing Google's recent SEC filings.

Do you think Google has violated any antitrust laws? Why or why not? Think of a possible solution or two that would help Google avoid further antitrust suits.