Search Neutrality As An Antitrust Principle

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January 26, 2012
Disclosure

- Thanks to Google and Microsoft for offering "fair and balanced" perspective on these issues.
What is Search Neutrality?

- Rhetorical offspring of "net neutrality."
  - Net neutrality: Internet service providers have obligation to transmit data packets on "non-discriminatory basis," i.e., first come, first-served basis.
  - Much legal wrangling in U.S, EU, and around the world
  - Google advocates "net neutrality"

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What Is Search Neutrality???

- Internet search engines (or, maybe, just dominant ones) ought not to prefer their own content on adjacent websites in search results but should instead employ “neutral” search algorithms that determine search result rankings based on some “objective” metric of relevance.
Google Market Power Varies Widely

Google Market Share by Country

U.S. | U.K. | Germany | France | Japan | China | Taiwan | S. Korea | Israel

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Identities Change, Same Problem?
First Hit for "Search Neutrality" on Google Images

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Fourth Hit
Contrast: Second Hit for "Net Neutrality"

It's not just a good idea, it ought to be the law.

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What Is Internet Search?

- Algorithm producing 10 blue links
  - Search engine provides only intermediate information—references.
- Integrated information portal/platform
  - Search engine provides final information
  - Search engine performs website interface functions.
Second "Ten Blue Links" Hit in Google Images (Daniel A. Crane, Univ. of Michigan)
Queue the usual suspects:
  – One monopoly profit theory
    ▪ Rejoinder: different consumer pools, different demand elasticities, for search and sites.
    ▪ Not strictly complementary goods
  – Efficiencies of vertical integration (i.e., double marginalization)
Rather beside the point

- Economic question: Is a dominant search engine dominant in referrals?
- Legal question: Can a search engine ranking be indispensable to site access, such that search engine becomes an essential facility?
Traffic comes from many sources.

30M/month

19M/month

20M/month

2.3B/month

346M/month

516M/month
Caution on Referral Figures

- Immediate referral site may be less relevant than where search *begins*.
- Heavy path dependence from search origin.
- Also, link lock-in once site discovered through search.
Still, Other Estimates Don't Make Google an Essential Facility

- Casual empirical estimate: Google organic search drives 41% to 21 studied websites (Kahn, 2008)
- 70-80% of traffic for new websites comes from search engines (roi.com 2011)
There's Always Access
Beyond 10 Blue Links

- Search engines as integrated information portals.
- Providing data, not just links.
- Website functionality integrated into the search page.
  - "How tall is Empire State Building" (Google)
  - "New York to Rome" (Bing)
  - "Venice" (Yahoo)
Implications

- What does "neutrality" mean in the world of integrated information portals?
  - Stock quotes
  - Travel
  - Images
  - Social networks
Special Rules for Google?

- Users expect "neutrality"
  - Forever?
  - Search neutrality as a consumer protection issue?

- Google is uniquely dominant
  - Can't mean a prohibition on innovation
Against a General Search Neutrality Principle: Naked Exclusion Only

- No general principle of search neutrality
- Elements of discrimination claim:
  - Deliberate targeting for disadvantage (Foundem litigation)
  - Overriding ordinary algorithmic protocols
  - Competitors or competitors of allies
  - Business judgment rule
    - Good faith belief complete defense
    - No balancing.
  - Anticompetitive effects
Beware the Administrative Complexities

- Who will administer a neutrality principle?
  - Dwarf MS technical committee
- Serious free speech implications