

DAVID N. CICILLINE
1ST DISTRICT, RHODE ISLAND

2233 RAYBURN BUILDING
WASHINGTON, D.C. 20515
(202) 225-4911
(202) 225-3290 (FAX)

1070 MAIN STREET, SUITE 300
PAWTUCKET, RI 02860
(401) 729-5600
(401) 729-5808 (FAX)



Congress of the United States
House of Representatives
Washington, DC 20515

July 23, 2019

CHAIR, DEMOCRATIC POLICY AND
COMMUNICATIONS COMMITTEE

COMMITTEE ON THE JUDICIARY

CHAIRMAN, SUBCOMMITTEE ON
ANTITRUST, COMMERCIAL
AND ADMINISTRATIVE LAW

SUBCOMMITTEE ON CRIME, TERRORISM
AND HOMELAND SECURITY

COMMITTEE ON FOREIGN AFFAIRS

SUBCOMMITTEE ON
EUROPE, EURASIA, ENERGY, AND
THE ENVIRONMENT

SUBCOMMITTEE ON MIDDLE EAST,
NORTH AFRICA, AND INTERNATIONAL
TERRORISM

SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

Jennifer Newstead
General Counsel, Facebook
1601 Willow Road
Menlo Park, CA 94025

Dear Ms. Newstead:

I write in regard to the oversight hearing held last week by the House Subcommittee on Antitrust, Commercial and Administrative Law as part of its broader investigation into competition issues in digital markets.¹ Matt Perault, head of global policy development at Facebook, testified on behalf of your company.

Although I appreciate Facebook's participation in the hearing, I was troubled by some of Mr. Perault's responses to questions from Members of the Subcommittee. In several instances, Mr. Perault claimed he was unfamiliar with basic facts about Facebook or the social media market or offered statements at odds with mainstream reporting. It is unclear whether Mr. Perault's inability to respond to these questions was due to a lack of preparation, purposeful evasion, or Facebook's selection of an inappropriate witness for the hearing.

In light of these concerns, I have attached several of the questions that Mr. Perault was unable or unwilling to fully answer during the hearing. This request is an opportunity for your company to supplement his responses; it does not relieve Facebook from complying with any Questions for the Record or additional requests for information.

Thank you for your prompt attention to this request.

Sincerely,

David N. Cicilline
Chairman

Subcommittee on Antitrust, Commercial
and Administrative Law
Committee on the Judiciary

¹ *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary, 116th Cong. (2019).*

Please fill out and return this form no later than July 26, 2019. While you are free to attach additional materials, if a question asks you to check the appropriate box, please do so where indicated.

1. What is the world's largest social media network by the number of active users?²

2. On what date did Facebook last change its terms and conditions that apply to Facebook users?³ _____
3. Since July 16, 2018, how many times has Facebook changed the terms and conditions that apply to Facebook users?⁴ _____

If the precise number is unknown, please check the box that represents Facebook's best estimate:

- | | |
|--|---|
| <input type="checkbox"/> Between 1-10 | <input type="checkbox"/> Between 11-25 |
| <input type="checkbox"/> Between 26-50 | <input type="checkbox"/> Between 51-100 |
| <input type="checkbox"/> Between 101-150 | <input type="checkbox"/> Over 150 |

4. Does Facebook have an investment fund or venture capital fund?⁵
 Yes No
5. Does Facebook currently dedicate, or has it previously dedicated, any resources to identifying promising tech startups or innovative non-Facebook platforms and apps?⁶

² *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. 68 (2019) (unofficial transcript on file with Majority Staff for the Subcomm. on Antitrust, Commercial and Admin. Law) [hereinafter "Hearing Transcript"] (Mr. Perault responding to Mr. Neguse's question asking Mr. Perault to identify the world's largest social media network company by active users by stating, "I don't [know].").

³ *Id.* at 61 (Mr. Perault responding to Mr. Johnson's question asking when Facebook last changed its terms and conditions by stating, "We evaluate our terms and conditions on a regular basis" and "We are constantly changing our terms and conditions to ensure that people have the best experience on our product.").

⁴ *Id.* (Mr. Perault responding to Mr. Johnson's question asking Mr. Perault to identify the number of times that Facebook has changed its terms and conditions over the last year by stating, "I don't have the specific data on that" and "I don't have the data.").

⁵ *Id.* at 47-48 (Mr. Perault responding to Mr. Armstrong's question asking about the extent to which Facebook uses venture capital funds to invest in start-ups by stating, "My understanding is that we do not engage in that practice, but I'd be happy to follow up with specifics.").

⁶ *Id.* at 41-42 (Mr. Perault responding to Ms. Jayapal's question asking whether Facebook devotes any resources to identifying promising tech start-ups or innovative non-Facebook platforms and apps by stating, "Not to my

Yes

No

6. What percentage of Facebook Messenger users do not use Facebook?⁷ _____

If the precise percentage is unknown, please check the box that represents Facebook's best estimate:

Between 1-25%

Between 26-50%

Between 51-75%

Between 76-100%

knowledge, no, Congresswoman” and “We certainly devote resources to understanding the competitive landscape in which we operate, but, no, I believe the answer to your question is no, not to my knowledge.”) *But cf.* Deepa Seetharaman & Betsy Morris, *Facebook's Onavo Gives Social-Media Firm Inside Peek at Rivals*, WALL ST. J. (Aug. 13, 2017), <https://www.wsj.com/articles/facebooks-onavo-gives-social-media-firm-inside-peek-at-rivals-users-1502622003> (reporting that Facebook's 2013 purchase of Onavo was “crucial to helping Facebook track rivals and scope out new product categories” and information collected through Onavo “shapes Facebook's product and acquisition strategy”); Josh Constone, *Facebook pays teens to install VPN that spies on them*, TECHCRUNCH (Jan. 29, 2019), <https://techcrunch.com/2019/01/29/facebook-project-atlas/> (“Desperate for data on its competitors, Facebook has been secretly paying people to install a ‘Facebook Research’ VPN that lets the company suck in all of a user's phone and web activity, similar to Facebook's Onavo Protect app that Apple banned in June and that was removed in August”); Jacob Kastrenakes, *Facebook will pay you to let it track what you do on your phone*, THE VERGE (Jun. 11, 2019), <https://www.theverge.com/2019/6/11/18661595/facebook-study-app-monitor-phone-usage-pay> (“Facebook will once again begin paying people to monitor how they use their phone through a new app called Study. The app will monitor which apps are installed on a person's phone, the time spent using those apps, the country you're in, and additional app data that could reveal specific features you're using, among other things.”).

⁷ Hearing Transcript, *supra* note 2, at 90 (Mr. Perault responding to Mr. Armstrong's question asking what percent of people that use Facebook Messenger do not use Facebook by stating, “I do not have that data.”).

cc:

**The Honorable Doug Collins, Ranking Member, Committee on the
Judiciary**

**The Honorable James F. Sensenbrenner, Jr., Ranking Member,
Subcommittee on Antitrust, Commercial and Administrative Law,
Committee on the Judiciary**

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SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

Kent Walker
Chief Legal Officer, Alphabet
1600 Amphitheater Parkway
Mountain View, CA 94043

Dear Mr. Walker:

I write in regard to the oversight hearing held last week by the House Subcommittee on Antitrust, Commercial and Administrative Law as part of its broader investigation into competition issues in digital markets.¹ Adam Cohen, director of economic policy at Google, testified on behalf of your company.

Although I appreciate Google's participation in the hearing, I was troubled by Mr. Cohen's responses to questions from Members of the Subcommittee. In several instances, Mr. Cohen claimed he was unfamiliar with Google's policies, major reports about Google's market power, or basic facts about the company's business dealings. It is unclear whether Mr. Cohen's inability to respond to these questions was due to a lack of preparation, purposeful evasion, or Google's selection of an inappropriate witness for the hearing.

In light of these concerns, I have attached several of the questions that Mr. Cohen was unable or unwilling to fully answer during the hearing. This request is an opportunity for your company to supplement his responses; it does not relieve Google from complying with any Questions for the Record or additional requests for information.

Thank you for your prompt attention to this request.

Sincerely,

David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial
and Administrative Law
Committee on the Judiciary

¹ *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. (2019).

Please fill out and return this form no later than July 26, 2019. While you are free to attach additional materials, if a question asks you to check the appropriate box, please do so where indicated.

1. In its S-1 filing with the Securities and Exchange Commission in 2004, Google attached an interview in which Larry Page stated the following: "We want you to come to Google and quickly find what you want... We want to get you out of Google and to the right place as fast as possible." Does this statement still accurately describe Google's guiding principle?²

Yes

No

2. Of the total U.S. mobile and desktop searches that occur on Google Search, is it true that less than 50% result in clicks to non-Google websites?³

Yes

No

3. Is it true that since January 2018, Google has paid or has agreed to pay Apple over \$20 billion for Google Search to remain the default search engine on Safari or on any additional Apple products?⁴

Yes

No

² *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. 54-55 (2019) (unofficial transcript on file with Majority Staff for the Subcomm. on Antitrust, Commercial and Admin. Law) [hereinafter "Hearing Transcript"] (Mr. Cohen responding to Mr. Cicilline's question inquiring whether this principle still guides Google by stating, "Our goal is to provide users information as quickly and as efficiently as possible.").

³ *Id.* at 55-56 (Mr. Cohen responding to Mr. Cicilline's question inquiring whether Mr. Cohen agreed with the results of a study that shows the majority of search traffic on Google no longer goes out to the broader web by stating, "I'm not familiar with either of those studies, but what I can say is that we send a lot of clicks, a lot of traffic to competitors."). See also Rand Fishkin, *How Much of Google's Search Traffic is Left for Anyone But Themselves?*, SPARKTORO (June 17, 2019), <https://sparktoro.com/blog/how-much-of-googles-search-traffic-is-left-for-anyone-but-themselves> (documenting that less than 50% of searches on Google result in clicks to non-Google websites).

⁴ *Id.* at 78-79 (Mr. Cohen responding to Mr. Raskin's question inquiring whether Google paid Apple \$9 billion in 2018 and \$12 billion in 2019 for the right to be the default search engine on Safari by stating, "I am not familiar with those numbers."). See also Lisa Marie Segarra, *Google to Pay Apple \$12 Billion to Remain Safari's Default Search Engine in 2019: Report*, FORTUNE (Sept. 29, 2018), <https://fortune.com/2018/09/29/google-apple-safari-search-engine/> ("Google will reportedly pay Apple \$9 billion in 2018 and \$12 billion in 2019 to remain as Safari's default search engine").

4. What is the size of Alphabet's venture capital fund?⁵ _____
5. Is the following statement true: Google's responsiveness to and treatment of pirated content on YouTube does not differ based on whether the original content was produced by Google or by an entity other than Google.⁶
- Yes No
6. Is it true that Google Maps carries over 10 million falsely listed businesses on any given day?⁷
- Yes No

⁵ *Id.* at 48 (Mr. Cohen responding to Mr. Armstrong's question asking about the extent to which Google uses venture capital funds to invest in start-ups by stating, "We do have a venture capital arm. I'm not familiar with the size or the scope of their investments.").

⁶ *Id.* at 36 (Mr. Cohen responding to Ms. Scanlon's question inquiring whether there is a discrepancy between how Google treats pirated copies of YouTube content and how Google treats pirated copies of content created by entities other than Google by stating, "I have not seen any evidence of a discrepancy.").

⁷ *Id.* at 92-93 (Mr. Cohen responding to Ms. McBath's question referencing a front-page *Wall Street Journal* report on 11 million fraudulent listings on Google Maps by stating, "I'm not familiar with this *Wall Street Journal* report. I'm also not familiar with any claims of fraudulent listing in Google Maps of that scale."). See also Rob Copeland & Katherine Bindley, *Millions of Business Listings on Google Maps Are Fake—and Google Profits*, WALL ST. J. (June 20, 2019), <https://www.wsj.com/articles/google-maps-littered-with-fake-business-listings-harming-consumers-and-competitors-11561042283> ("Online advertising specialists identified by Google as deft fraud fighters estimated that Google Maps carries roughly 11 million falsely listed businesses on any given day, according to a Journal survey of these experts.").

cc:

**The Honorable Doug Collins, Ranking Member, Committee on the
Judiciary**

**The Honorable James F. Sensenbrenner, Jr., Ranking Member,
Subcommittee on Antitrust, Commercial and Administrative Law,
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SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

David Zapolsky
General Counsel, Amazon
410 Terry Avenue North
Seattle, WA 98109

Dear Mr. Zapolsky,

I write in regard to the oversight hearing held last week by the House Subcommittee on Antitrust, Commercial and Administrative Law as part of its broader investigation into competition issues in digital markets.¹ Nate Sutton, associate general counsel at Amazon, testified on behalf of your company.

Although I appreciate Amazon's participation in the hearing, I was troubled by Mr. Sutton's responses to questions by Members of the Subcommittee. In several instances, Mr. Sutton responded to questions from Members of the Subcommittee by offering either ancillary information or partial and selective responses. In one instance, his answer has been contested by a former Amazon employee, raising questions about the veracity of his responses under oath.²

In light of these concerns, I have attached several of the questions that Mr. Sutton did not fully answer during the hearing. This request is an opportunity for your company to supplement his responses; it does not relieve Amazon from complying with any Questions for the Record or additional requests for information.

Thank you for your prompt attention to this request.

Sincerely,

David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial
and Administrative Law
Committee on the Judiciary

¹ *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary, 116th Cong. (2019).*

² See generally *infra* note 3.

Please fill out and return this form to the Subcommittee no later than July 26, 2019. While you are free to attach additional materials, if a question asks you to check the appropriate box, please do so where indicated.

1. Does Amazon use *any* of the data (including aggregate data on specific product categories) it collects on Marketplace transactions to inform its private label strategy?³

Yes

No

2. Is it true that the *only* information about Marketplace sales that Amazon uses to inform any decisions about its private label strategy is information that Amazon makes publicly available about the sales rank of each product?⁴

Yes

No

3. If a product on Amazon is being sold at the same price both by Amazon and by a Marketplace seller who is enrolled in Fulfillment by Amazon, then Amazon's algorithm does not in any way favor the Amazon product when assigning the Buy Box. Is this statement true?⁵

Yes

No

³ *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. 44-45 (2019) (unofficial transcript on file with Majority Staff for the Subcomm. on Antitrust, Commercial and Admin. Law) [hereinafter "Hearing Transcript"] (Mr. Sutton responding to Ms. Jayapal's question inquiring whether Amazon devotes any resources to identifying the most popular brands and products sold on Amazon by stating, "With respect to data such as you identified, we do not use any seller data for -- to compete with them. Last year was our smallest year of acquisitions, and we've only had one multibillion dollar acquisition and that was Whole Foods."); *id.* at 50-53 (Mr. Sutton responding to Mr. Cicilline's question inquiring whether Amazon uses seller data to promote Amazon products by stating, "We use data to serve our customers. And to clarify my question, we don't use individual seller data to directly compete with them."); *but cf. Amazon: Former Employee Challenges Executives' Denial About Company's Use of Sellers' Data*, THE CAPITOL FORUM (July 18, 2019) ("I used to pull sellers' data to look at what the best products were when I was there," said the former employee, who used to work in product management.").

⁴ Hearing Transcript at 44 (Mr. Sutton responding to Ms. Jayapal's question inquiring whether Amazon tracks the popularity of products on its platform to inform its private label strategy by stating, "That data on popularity of products like much retail data is actually public data. For each of our products you can see where it's ranked. You can see how popular it is.").

⁵ *Id.* at 52 (Mr. Sutton responding to Mr. Cicilline's question inquiring whether Amazon favors Amazon-branded products by stating, "[W]e apply the same criteria whether you're a third-party seller or Amazon").

4. If a product on Amazon is being sold at the same price both by a Marketplace seller who is enrolled in Fulfillment by Amazon (FBA) and by a Marketplace seller who is not enrolled in FBA, then Amazon's algorithm does not in any way favor the FBA-eligible product when assigning the Buy Box. Is this statement true?⁶

Yes

No

5. What percentage of the U.S. online retail market does Amazon capture?⁷ _____

If the precise percentage is unknown, please check the box that represents Amazon's best estimate:

1-10%

11-20%

21-30%

31-40%

41-50%

51-60%

61-70%

71-80%

81-90%

91-100%

6. What percentage of the U.S. market for cloud computing services does Amazon Web Services capture?⁸ _____

If the precise percentage is unknown, please check the box that represents Amazon's best estimate:

1-10%

11-20%

21-30%

31-40%

41-50%

51-60%

61-70%

71-80%

81-90%

91-100%

⁶ *Id.* at 73 (Mr. Sutton responding to Ms. McBath's question inquiring whether Amazon privileges FBA sellers by stating, "We apply the same -- we do not favor sell -- products that use FBA over others.").

⁷ *Id.* at 57-58 (Mr. Sutton responding to Mr. Steube's question inquiring about Amazon's share of U.S. online retail sales by stating "Online is not a separate market assist on another channel... With respect to online, Amazon is one of the leading retailers, there are many other retailers including Walmart and every other major retailer who has a large online presence, as well as just online players such as E-Bay.").

⁸ *Id.* at 59-60 (Mr. Sutton responding to Mr. Steube's question inquiring about Amazon's share of U.S. cloud computing by stating, "With respect to Enterprises the vast majority of that space is still operating on premise servers and cloud is a new and developing space. We are one of the innovators so we are a leader, but competition primarily exists with long-standing on premise IT competitors.").

7. What year did Amazon enter the cloud computing market?⁹ _____

8. Is the "Gazelle Project" still active at Amazon?¹⁰

Yes

No

9. Please specify the exact number of Amazon employees that are dedicated to understanding and responding to the concerns of Marketplace sellers, including concerns relating to account suspensions.¹¹ _____

If the precise number is unknown, please check the box that represents Amazon's best estimate:

Under 1,000

Between 2,001-3,000

Between 4,001-5,000

Between 6,001-7,000

Between 8,001-9,000

More than 10,000

Between 1,000-2,000

Between 3,001-4,000

Between 5,001-6,000

Between 7,001-8,000

Between 9,001-10,000

⁹ *Id.* at 60 (Mr. Sutton responding to Mr. Steube's question inquiring what year Amazon entered cloud computing by stating, "A number of years ago. I don't remember the exact year.").

¹⁰ *Id.* at 84 (Mr. Sutton responding to Mr. Cicilline's question inquiring whether the Gazelle Project is still active at Amazon by stating "I'm not familiar with that project."). *See also* BRAD STONE, *THE EVERYTHING STORE: JEFF BEZOS AND THE AGE OF AMAZON* 243-44 (2013) ("[Bezos] asked Blake to exact better terms from the smallest publishers, who would go out of business if it weren't for the steady sales of their back catalogs on Amazon. Within the books group, the resulting program was dubbed the Gazelle Project because Bezos suggested to Blake in a meeting that Amazon should approach these small publishers the way a cheetah would pursue a sickly gazelle. As part of the Gazelle Project, Blake's group categorized publishers in terms of their dependency on Amazon and then opened negotiations with the most vulnerable companies.").

¹¹ *Id.* at 74 (Mr. Sutton responding to Ms. McBath's question inquiring how many employees at Amazon are dedicated to addressing Marketplace sellers' concerns about account suspensions by stating, "We have thousands of employees dedicated to helping and address concerns from third party sellers.").

10. Please identify the specific steps that a Marketplace seller would take to reach an Amazon employee.¹²

11. What specific avenues of recourse are available for Marketplace sellers whose accounts are suspended by Amazon?¹³

¹² *Id.*

¹³ *Id.* at 75 (Mr. Sutton responding to Ms. McBath's question inquiring how Amazon would respond to sellers who say they have no way of reaching an Amazon employee and asking Amazon to identify what forms of recourse are available to sellers by stating, "We provide a variety of ways for them to reach out...I don't know the full way[s]... I would be happy to follow up and provide the full examples and details of that for you as well."); *id.* at 95 (Mr. Sutton responding to Mr. Raskin's question inquiring about any processes available for businesses to seek recourse for discrimination by stating, "With respect to small- and medium-size sellers that sell through our store, we have many processes in place. We have a seller central that provides a lot of tools and services for them and lots of opportunities to communicate with Amazon if they have any concerns."). *But cf.* Josh Dzieza, *Prime and Punishment*, THE VERGE (Dec. 19, 2018), <https://www.theverge.com/2018/12/19/18140799/amazon-marketplace-scams-seller-court-appeal-reinstatement> ("The Performance team, which handles suspensions, has no phone number; there's no one to ask for clarification. The only way to interact with them is by filing an appeal, and when it's rejected, sellers often have no idea why. Sellers can call another Amazon department, Seller Support, but those workers can't provide information about the Performance team and can offer only generic advice about what the seller might have done wrong.").

cc:

**The Honorable Doug Collins, Ranking Member, Committee on the
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