

June 26, 2019

The Honorable Ted Cruz
Russell Senate Office Building 127A
Washington, DC 20510

Re: Project Veritas's Investigation Concerning Google

Senator Cruz:

I write to you today on behalf of my client, Project Veritas, concerning its recent news report focusing on Google. In the report, Project Veritas learned how these businesses suppress the free flow of ideas across the internet, corrupt search results, and may influence elections. Because these practices implicate legal and legislative concerns, we write to alert you about them. Please note that we have only included the attachments to this letter by e-mail due to their size.

1. Google

Project Veritas's most recent report focused on the actions of Google that distort search results and may also manipulate elections. Project Veritas secretly recorded Google executive Jen Gennai explaining how Google is focused on "never letting somebody like Donald Trump come to power again." She went on to explain that Google was "training our algorithms, like, if 2016 happened again, would we have, would the outcome be different?"

a. Federal Election Law Concerns

Google's plans to intervene in the 2020 electoral cycle implicate clear violations of federal election law. Under the Federal Election Campaign Act ("FECA"), federal election law prohibits corporations from making contributions.¹ This prohibition includes in-kind contributions by corporations where something of value is offered that supports or opposes a candidate for office. As an incorporated entity, Google is forbidden under the FECA to use resources to "never let[] somebody like Donald Trump [to] come to power again." It is similarly forbidden to promote candidates it would favor. Using its massive resources to alter search results, impact electoral internet traffic, or otherwise attempt to prevent a candidate from winning an election are all illegal acts when done by corporate actors. The captured video of Ms. Gennai illustrates that Google is currently "training [its] algorithms" and is thus taking concrete steps likely in violation of federal election law.

The Federal Election Commission has no shortage of examples of past prohibited corporate contribution enforcement matters.² But these have usually occurred before the rise of the influence of big tech companies and social media platforms. Just as it would be illegal for a corporation to give free private jet transportation to favored candidates, but not to others, any use of corporate resources to advance or hinder candidates online

¹ 52 U.S.C. § 30118(a).

² See, e.g., Matter Under Review 5487 ("Progress for America Voter Fund") (FEC Feb. 28, 2007); 5645 (America's Foundation) (FEC May 1, 2007).

is equally suspect and should be evaluated.³ This should be a grave concern for the Department of Justice and the Federal Election Commission.

b. Loss of Immunity and Other Concerns Under Section 230

Beyond possible meddling in elections, both the secretly recorded audio and documents obtained by a Google insider demonstrate widescale manipulation of search results. It appears Google has implemented an “algorithmic unfairness” principle. According to Google, “algorithmic unfairness” means “unjust or prejudicial treatment of people that is related to sensitive characteristics such as race, income, sexual orientation, or gender, through algorithmic systems or algorithmically-aided decision making.” Exh. A at 1. This is found in “Machine Learning Fairness”—the concept that Google will produce search results based on its own subjective determination of what is fair or equitable, not necessarily what is objectively true.

Google enjoys a congressional grant of specially conferred immunity under Section 230 of the Communications Decency Act (“CDA”).⁴ Central to a claim to Section 230 immunity is that an online platform act as an “interactive computer service”—an intermediary that presents content that third parties create. These third parties are termed “information content providers” under the CDA. Courts have been gratuitous in applying Section 230 of the CDA, and whole hosts of interactive computer services have enjoyed immunity as a result.⁵ Thus, those who qualify as “interactive computer services” enjoy broad immunity claims under Section 230 while those who create content—“information content providers”—do not.⁶ In 2019—some 23 years since the passage of the CDA—separating interactive computer services from information content providers can be difficult. Google aptly demonstrates this.

In the course of Project Veritas’s investigation, it learned that Google does not always provide search results based on precisely the term someone is searching for. For example, when typing “Men can . . .” James O’Keefe demonstrated that Google auto-filled the search with queries like “men can have babies,” “men can get pregnant,” and “men can have periods.” The Google insider indicated that these are not usual terms people are searching for, but items Google wants people to search for. That is, through Machine Learning Fairness, Google is creating content by inserting speech it favors over the speech of its users.⁷

Internal documents obtained by Project Veritas demonstrate that Google is covertly acting as an information content provider while hiding behind the protection of an interactive computer service. Through Machine Learning Fairness, Google intervenes in search results that might produce stereotypes or “unjust” results to

³ 11 C.F.R. § 100.52(d).

⁴ 47 U.S.C. § 230.

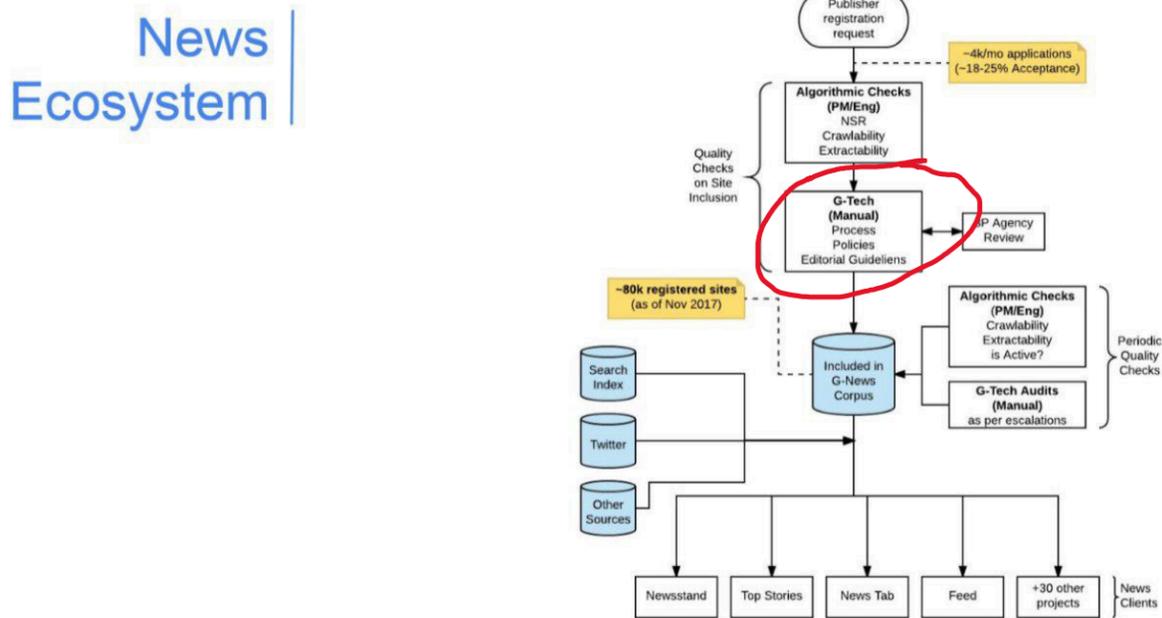
⁵ See, e.g., *Levitt v. Yelp! Inc.*, 765 F.3d 1123 (9th Cir. 2014) (alleged extortion and unfair business practices by Yelp immunized under Section 230); *Blumenthal v. Drudge*, 992 F.Supp. 44 (D.D.C. 1998) (online service hosting gossip columns immune under Section 203); *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003) (website collecting information on stolen art protected against defamation claims under Section 230).

⁶ See, e.g., *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008)(no Section 230 immunity where website created questionnaire); *F.T.C. v. Accusearch, Inc.*, 570 F.3d 1187 (10th Cir. 2009)(website featuring the curation and sale of personal data not immune under Section 230).

⁷ The platform similarly favored searches about Donald Trump’s e-mails, but not searches about Hillary Clinton’s e-mails. Beyond Section 230 concerns, this raises additional election interference issues.

create content suitable to its view of fairness and equity. But that manipulation of user queries moves it from an interactive computer service to an information content provider, stripped of immunity under Section 230.

The following chart (found in Exhibit A at 2), obtained by a Google insider, demonstrates this problem.



Rather than act as an online intermediary, freely publishing news or aggregating it, Google appears to include a manual oversight function—“G-Tech.” Under G-Tech, Google determines if a news source matches its policies and editorial guidelines. As noted by Gennai, “conservative sources” and “credible sources” often do not coincide.⁸ Other documents show that Google is working to establish its own “single point of truth” for the news displayed to users. In other words, Google appears to take affirmative, manual steps to curate and proactively decide which preferred news will be displayed to Google users.

The attached documents in Exhibit A obtained from a Google insider continue to reinforce this point. For example, in its Machine Learning Fairness documents, Google explains that autocomplete is akin to Google interrupting you speaking and completing your sentence for you. Exh. A at 85. That is, Google stops the communication of a user and, instead, communicates on its behalf in terms deemed “fairer” by it. Under the rubric established by Section 230, filling in user-generated speech with Google’s own should remove legal immunity.

⁸ This, too, raises concerns under the FECA. By limiting Google user access to select points of political views in the months leading up to elections, or even blacking out stories entirely, Google might effectively manipulate election results. This sort of interference is forbidden by corporate actors. 52 U.S.C. § 30118(a).

Courts have generally observed that the underlying purposes of the CDA were to: (1) “maintain the robust nature of Internet communication” and (2) “keep government interference in the medium to a minimum.”⁹ Section 230 was thought necessary to achieve protection for free speech online, though its track record is presently muddled. With Google enjoying a near-monopolistic presence online, it is unclear how the CDA protects First Amendment values given the results of Project Veritas’s investigation.

It is also problematic that in 2019, in efforts to build trust and sort out misinformation, big tech and social media platforms routinely do injury to free speech. Just after the launch of Project Veritas’s Google investigation report, YouTube removed the news video report from its platform, citing a “privacy complaint.” Scores of other prominent and not-so-prominent online personalities, commentators, and educators have witnessed their speech disappear without remedy.

Given that the underlying purpose of the CDA is to promote free speech over the internet, Congress should pause to observe its results. In an age of social media and big tech dominance, this grant of congressional immunity has allowed companies to damage free speech interests. All too often, conservative speakers are the object of direct and indirect censorship and find their posts hidden, or “shadow banned,” or that they are entirely unable to communicate across these platforms. And in today’s world, being able to speak, or even be seen, on Google, Facebook, or other social media platforms is a requisite for meaningful speech. In this sense, the powerful few, hiding behind a grant of congressional immunity, silence the powerless many. This cannot be the result Congress intended.

2. Other Project Veritas Investigations Prove Concerning

In February 2019, Project Veritas came forward with a news investigation concerning Facebook and its “deboosting” or “dethrottling” of select political speech online. A Facebook contractor insider indicated that terms she found like “action deboost” operated to reduce functionality on Facebook posts and that these usually corresponded with conservative commentators like Steven Crowder and the Daily Caller. It was also apparent to the insider that the deboosting efforts were done without notice to end users.¹⁰ Examples of this can be found in Exhibit B at 2-3.

Even more alarming was Project Veritas’s investigation into Pinterest when an insider came forward with news about internal suppression of certain voices on its platform. As was described by the insider and confirmed with Pinterest documents, a prominent pro-life organization, liveaction.org, was included in a blocked pornography list on its platform, making pinning to it impossible. *See* Exhibit C at 1. Also problematic for Pinterest were terms added to a “sensitive terms list” that included items like “Bible,” “Easter,” and “Christian.” *See* Exhibit D at 6. Pinterest even included key terms to block or alter functionality related to the 2020 election, like “Western Journal” or “Kamala Antifa.” Thus, stories Pinterest preferred about the 2020 election flowed freely through its platform while those espousing narratives Pinterest disliked were reduced or eliminated.

After investigating Twitter, Facebook, Pinterest, and Google, it becomes clear that social media giants and big tech believe their platforms will not be hubs of free speech, but curated echo chambers.

⁹ *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997).

¹⁰ Project Veritas found similar deboosting efforts in its investigation of Twitter in 2018. <https://www.projectveritas.com/twitter/>

3. Conclusion

For some time, Congress has been concerned about the impact that big tech and social media companies have on elections, free speech, and competition. Through Project Veritas's investigative reporting, it has found:

- Big tech companies are likely using corporate resources to influence elections.
- Big tech and social media companies hide behind the grant of congressional immunity under Section 230 to manipulate speech and search queries.
- Free speech is being hindered, not advanced, by these trends.

George Orwell once commented that if "liberty means anything at all, it means the right to tell people what they do not want to hear." Big tech and social media companies are in sore need of this wisdom today. We hope you find the results of these investigations as concerning as we did and remain available to assist you as you address these issues.

Respectfully,



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