Google After Antitrust: The Good, the Bad, and the Ugly

Tim Carter was blindsided when his home-improvement site AsktheBuilder.com [1] fell out of favor with Google's search algorithm about 21 months ago. His daily ad revenue from Google AdSense crashed from $1,400 to $70.

"I have learned my lesson," Carter said. "Anybody who builds a business based on the whims of a search engine's algorithms -- that's a foolish thing to do."

This recrimination, mind you, is coming from a former Google advocate. In 2009, Google published an AdSense case study [2] about his success, and Carter even testified before the U.S. Congress [3] to defend Google against antitrust accusations tied to a proposed 2008 search-ad deal with Yahoo.

How times change. Now he's lending his voice to the efforts of FairSearch.org [4], a coalition of Google competitors including Microsoft, Kayak, TripAdvisor, Expedia, and Foundem [5].

So what turned fan into foe? In 2011, Google started its "Panda" project to weed junky sites out of search results. Carter's site, unfortunately for him, was caught in the junk pile. Carter saw searches that once steered people to AsktheBuilder.com shift to competitors such as eHow (even when that site quoted AsktheBuilder's content [6]). Daily Web site visitors dropped from 60,000 to 8,000, and Carter's business was cooked.

One person at Google familiar with AsktheBuilder.com's case defends Google's algorithm: after months in conversations with Carter, Google eventually concluded Carter's Web pages weren't obviously better than the competition despite his original content. That's no consolation to Carter, though.

"I'm completely changing my business model so I do not rely on the search engines whatsoever," Carter said in a recent interview. "What I'm doing now is getting deep into the online video tutorial business."

You could make the case that when it comes to the Internet, it's Google's world and we're all just searching in it. Big news sites (like this one) hope Google will send it many readers. Retailers hope it will send them shoppers. And service providers, both legal and illegal, hope it will send them customers willing to pay for what they're providing.

It shouldn't be a surprise then that the site, with 67 percent share of searches in the United States and 66 percent worldwide (according to ComScore), is facing major antitrust pressure from the U.S. Federal Trade Commission [7] and the European

Commission [8]. Their jobs are to ensure businesses can compete fairly even in markets where one holds a monopoly. Still surprised Google is in their crosshairs? Consider that eMarketer predicts Google will generate $13.4 billion in net revenue from search ads this year, 75 percent of the total market, rising to $16.5 billion in 2014, or 76 percent of the market.

Of course, Google has had regulatory run-ins before. It overpowered objections and acquired DoubleClick [9], AdMob [10], and ITA [11], but it knuckled under when the U.S. Justice Department threatened to sue over a Google-Yahoo search-ad deal [12].

But unlike the earlier antitrust fights, today's investigations are aimed at Google's heart: search and search advertising. After more than a year of investigation in both the EU and the United States, it appears regulators are ready to make a move, and most expect action by the end of the year. FTC Chairman Jonathan Leibowitz is pushing Google to make a settlement offer [13] "in the next few days" or face a lawsuit, Bloomberg reported last week [13].

Google declined to comment for this story except to say, "We continue to work cooperatively with the Federal Trade Commission and European Commission and are happy to answer any questions they may have."

Joaquin Almunia, the vice president of the European Commission in charge of competition

Here's where we dutifully point out that we simply don't know what's going to happen to Google in this fight with the Western world's trustbusters. We do know

that few expect the Googlers to emerge unscathed. They could dig in their heels, refuse to settle, win in the courtroom, and still lose if embarrassing e-mails emerge or competitors gain a court-mandated insight into Google's business.

So we set out on a bit of an adventure: What could Google look like at the end of its encounter with this regulatory buzz saw? Chopped up? Mashed and mauled beyond recognition? Miraculously intact and unrepentant if a tad bit embarrassed? We interviewed two dozen people directly involved in the cases or with a front-row view of the fight and asked them a simple question: What's going to happen?

Of course, the answers ran the gamut and were often as nuanced as a Bill Clinton deposition. So we put them in categories: The good, at least for Google; the bad; and the ugly, the worst possible outcome for this still-young Internet goliath.

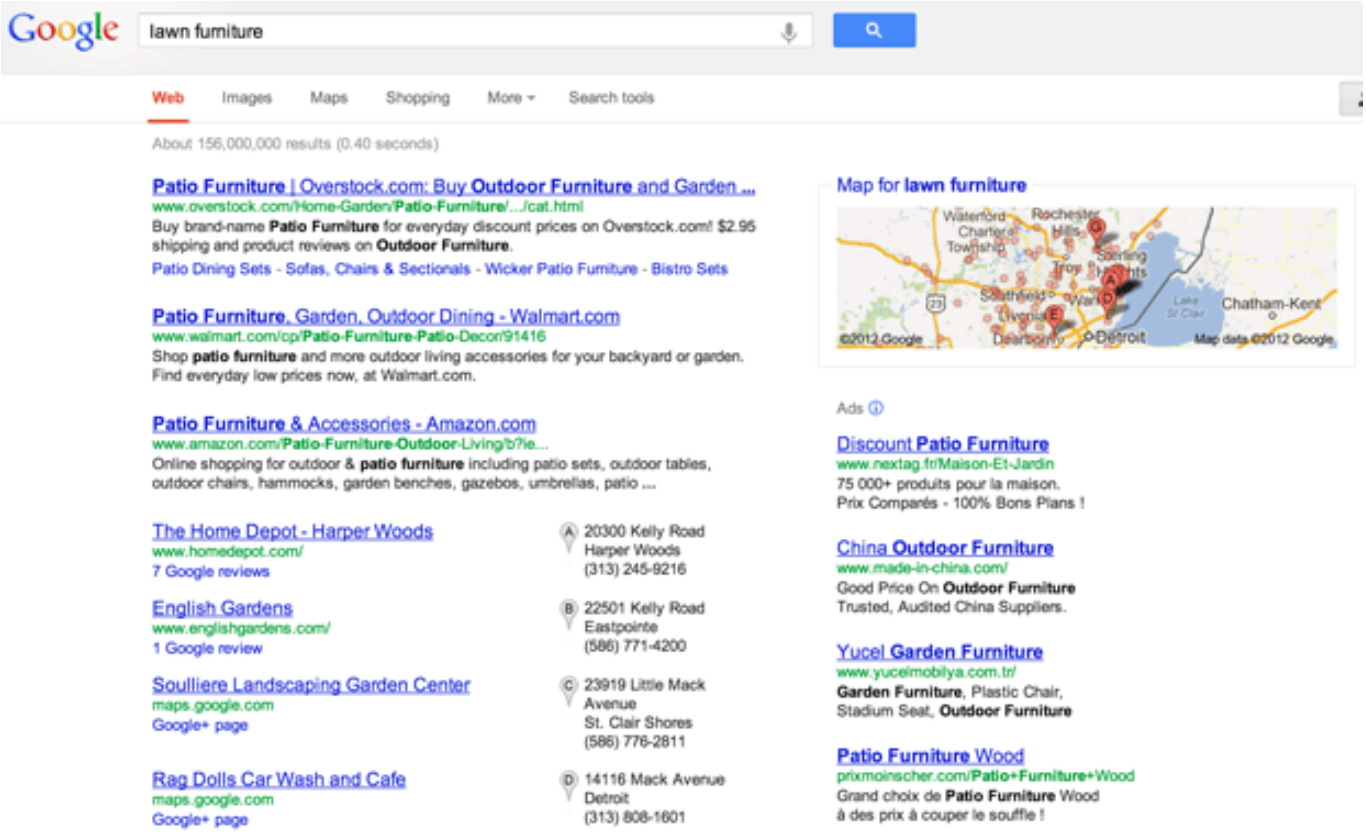
Why the long face? But first we think we need to answer a question: Why are all these people so ticked off at Google, the guys whose very motto is "Don't be evil"?

It wasn't all that long ago that Google simply pumped a firehoseful of visitors to other Web sites appearing in its search results. Not any longer. Google is recrafting search so it provides answers and services -- often from its own sites -- instead of a list of "10 blue links" pointing to other people's sites.

And that's a problem for those other sites. Google has become the dominant gateway to sites on the Internet and they think Google is playing favorites with its own stuff. And there's a lot of Google stuff to work with. With Google's breadth today, its own services step on the toes of everything from Twitter to Yelp to MapQuest to comparison-shopping site TheFind [14].

That leads to another question: Is Google abusing its dominance, shutting out competitors from search results to illegally maintain its search monopoly? Take comparison-shopping sites like Nextag: Google argues that a search result that just points to another search engine only adds busywork for a person who wants to actually get information on products (and, by the way, they can get that information from Google Shopping). But Nextag argues that its comparisons are useful to consumers, so Google demoting the site in search results means Google needn't worry about the company threatening its power.

"I am concerned about Google demoting me. I am also concerned about Google knowing too much about my business and using it for their advantage," said Sandeep Aggarwal, founder and chief executive of Indian e-commerce startup ShopClues [15]. "Google is truly a monopoly, and their behavior suggests nothing different than that."



A Google search for lawn furniture shows a blend of local results supplied by Google, including Google Maps locations, some links to Google+ pages, and some Google-hosted customer reviews. On the right edge below the map are search ads from companies including comparison-shopping site Nextag, which objects to Google's treatment in regular search results.

It's gotten so serious that Google dominance is now a cultural meme -- see for example the recent episode of the Good Wife, "Two Girls, One Code [16]," in which a startup fights a legal battle with a search engine accused of manipulating search results.

Here's a way to be found in search, critics complain: buy search advertisements through Google's AdWord auctions. "If you want to be heard on the Web, you have to do business with Google," complained Jamie Court of Consumer Watchdog [17], a group that's been sharply critical of Google.

Critics also accuse Google of pressuring makers of smartphones to use Google search if they want to use the ostensibly free Android [18] operating system, and they say Google makes it impossible for search-ad management companies to let clients span multiple search engines. Another charge is that when publishers build Google search boxes into their Web sites, third parties can't sell ads against searches there.

And Google can benefit from a positive-feedback loop: The more people contribute content to Google properties, the better those properties fare in search results. That's why Herndon Hasty, regional director of search engine optimization (SEO) at iProspect [19], advises clients to publish videos on YouTube, add business listings to

Google Places, blog on Blogger, and set up a presence on Google+.

Google contends it has no obligation to help out other Web sites and that it faces competition not just from direct search rivals but also from the fast-moving mobile realm, where competitors such as CitySearch [20] and Yelp [21] release mobile apps.

"We built search to help users, not Web sites," Amit Singhal, Google's senior vice president in charge of engineering for search, said in a blog post [22] rebutting an attack from Nextag [23]. Google also has long maintained that "competition is a click away" because dissatisfied searchers try places like Bing, Yahoo, Google Minus Google [24], and DuckDuckGo [25].

There's merit to Google's defense. After all, its search sends an awful lot of traffic to companies for free. But that's not enough for regulators.

The good: Getting off easy Perhaps Google just needs some cosmetic changes. That's the "good" scenario for the company. One idea that's been floated is labeling, in which Google's own properties would get a clear Google label in search results.

"Part of the problem is that consumers may not know that their results are being manipulated in a particular way," said Craig Wildfang [26], an attorney with Robins, Kaplan, Miller & Ciresi who previously worked on antitrust actions at the U.S. Justice Department. "Some kind of notice or labeling -- where you don't require the underlying conduct to be changed but you require them to be more upfront with what they're doing -- that's something Google could probably live with," Wildfang said.

Another approach might be to offer different results depending on the preferences consumers explicitly express, Wildfang added.

But Google's opponents say labeling is woefully inadequate. Google would still show whatever it wants in search, and searchers likely would continue happily clicking on search results with Google services such as Google Maps, YouTube, Google Places, and Google Images.

The bad: reworked search algorithm Now we move to behavioral remedies with more teeth.

The leading option here would be a mechanism to ensure Google's search algorithm treats the company's own sites the same as it treats others. In other words, no letting a YouTube video bump aside something on Vimeo [27] or DailyMotion [28] whose content is deemed to be as good. When presented with evidence that Google product-search suggestions nearly always appeared in third place on the first page of search results, Executive Chairman Eric Schmidt testified [29] before the Senate in September 2011 that "we have not cooked anything [30]." But critics scoff at the assertion.

"One thing I think must be part of any appropriate remedy is applying the same

algorithm to its stuff as it does to everybody else.... Some sort of order requiring Google to effectively treat its own results equivalently to others' and not to demote other results inappropriately," said Thomas Vinje, a Clifford Chance attorney who represents FairSearch.org in Europe.

If Google were required to commit to "treat its downstream competitors on an equal basis [to its own properties appearing in search results], my suspicion is Google would agree to that," said Richard Brosnick [31], an attorney at Butzel Long. Also potentially palatable: making Google share some secret search sauce with competitors, Wildfang said.

But that's probably where Google's agreeability would end. There's no chance Google would accept more-intrusive regulatory involvement such as requiring governmental approval of algorithm changes. "They would rather fight the case," Brosnick said.

And regulators would face a big challenge making big changes, because Google has a legal trend on its side: the demise of the "essential facilities" doctrine of antitrust law. Before that doctrine fell out of favor, it could be used to force changes at a company that dominated something deemed essential -- the gateway to all things on the Internet, in this case.

Google "is functioning in many ways like a public utility. You can think of public regulation over what they're allowed to do and not allowed to do," said John Simpson, another member of Consumer Watchdog.

The FTC's case is conceptually similar, but "they won't call it essential facilities because they're smarter than that," Brosnick said. "A lot of the FTC's case is to say that Google's natural search is an essential facility without which whole areas of Web businesses cannot compete -- if they are foreclosed from being able to show on the first page of search, they'll go out of business."

The ugly: a breakup The most Draconian fix -- and the most entertaining if you're a sadist -- would be what antitrust lawyers call structural remedies but what ordinary human beings might call splitting up a company. Slicing off pieces of Google into separate companies would mean one part of the company no longer has the incentive to help another part.

It sounds terribly dramatic. It's also the least likely outcome because, "It's hard to unscramble the eggs," Wildfang said. Besides, FairSearch.org prefers behavioral remedies. Still, you may not be surprised to hear that Google's fiercest critics relish the prospect of blowing Google into pieces.

Gary Reback [32] a high-profile Silicon Valley antitrust attorney with Carr & Ferrell who represents several of Google's comparison-shopping rivals, said Google should be required to sell off -- surprise, surprise -- its own comparison-shopping service.

Antitrust attorney Gary Reback

"It can be branded Google Shopping but can be provided by someone else," Reback said. Another divestiture fan is the European Consumer Organisation (BEUC), which lobbied the EC for structural changes in an October 31 letter (PDF [33]).

Consumer Watchdog's Court suggested splitting off the entire search operation. "The search functions might have to be taken apart and put into a separate company. The only real remedy to preventing Google's requiring [competitors use its] paid services to be found on the Internet is to make Google smaller so it doesn't have the power to do that," he said. "We don't believe a company that has 90 percent of search share in mobile and 70 percent on the Internet can play fair. It's just too much dominance."

Yes, that's drastic. It would produce one Google that looked something like what the company was a decade ago, before it blended so much of its own content into search results. And it would create another Google that offered online services for users, such as Gmail, YouTube, and Google Docs.

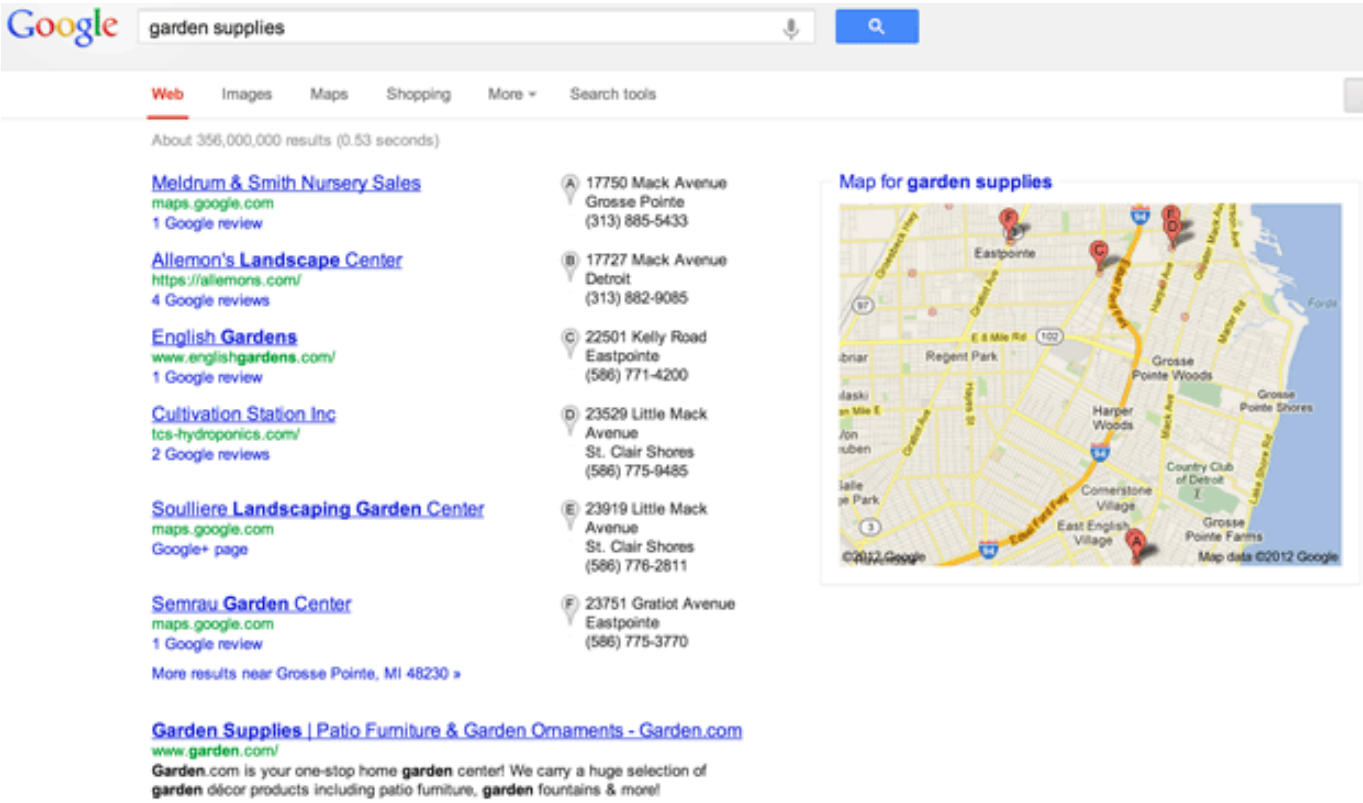
It's drastic, but not without precedent. In the DOJ's antitrust case against Microsoft, a judge sought to split Windows and Office into separate companies [34], a proposal that would conceivably have encouraged Office developers to support other operating systems and to encourage Windows to play more nicely with developers of higher-level software.

Reback has serious street cred since he spearheaded, as an attorney for Netscape, opposition to Microsoft [35] in the 1990s case against the software giant. Though Microsoft didn't prevail in that antitrust case, it did fend off the breakup when an appeals court scotched the idea [36].

The future of search If you like the direction Google is headed with search, you might not like the consequences of the antitrust investigations.

Google -- and Bing and Yahoo, for that matter -- have moved beyond supplying just hyperlinks. They spruce up results with images or star ratings; blend in news, images, and videos; provide answers to questions; show business locations on maps; and spotlight retail outlets where products are available. Beyond traditional search engines come Apple's Siri software for its mobile devices, Google's

competing voice-driven search apps, and any number of apps for plumbing the depths of sites such as Amazon. Personalized results appear as Google spotlights things like a friend's Google+ post and Bing does the same with Facebook status updates.



This Google search for garden supplies shows no search ads whatsoever. Results include links to Google+ pages and Google-hosted reviews. Google competitors object to Google featuring its own properties so prominently in search results, but Google argues that it's trying to help users, not Web sites.

Google is going further, too, in the browser and beyond. It's begun adding search results from Google Drive, Google Calendar, and Gmail [37] into its regular search results for users who opt into its "field trial." It's showing panels of information relating to some searches from its Knowledge Graph [38] alongside search results. And it's trying to anticipate what you want before you even search for it, becoming a sort of omnipresent electronic personal assistant [39] by showing your upcoming flight information alongside search results and generating Google Now alerts on Android phones to tell you about restaurants or remind you to leave for appointments.

Antitrust actions might squelch these and other innovations, Michigan Law School professor Daniel Crane [40] fears. In a 2011 paper titled "Search Neutrality as an Antitrust Principle [41]," he argued against overzealous attempts to control Google search:

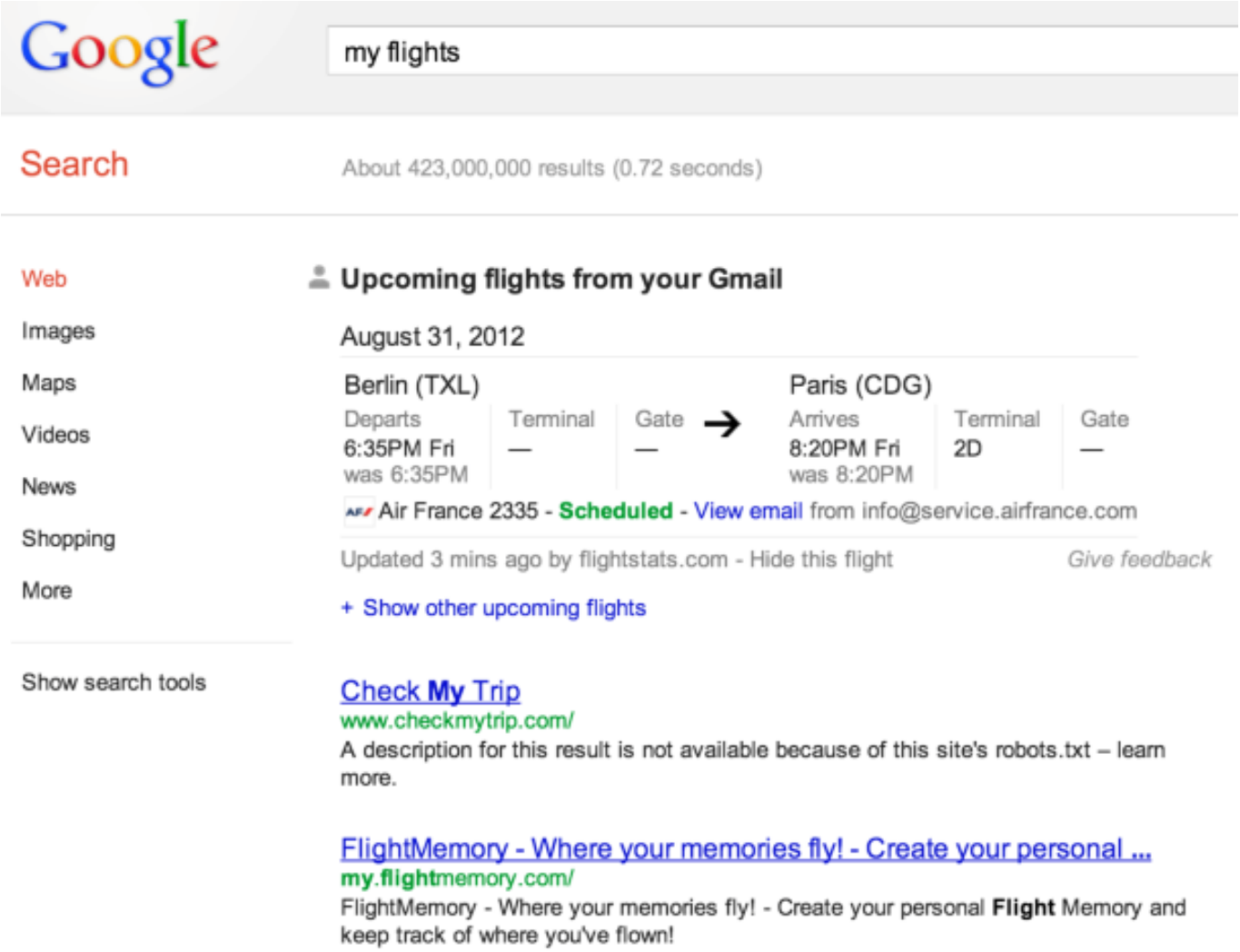
> Much of the conversation about a search neutrality principle seems to

> envision the world of search circa, say, 2005. In this world, the relevant Internet consisted of two different segments -- Web sites and search engines. Web sites were the Internet's information wells, places users went to access content. Search engines were not ultimate information but only ways to access information...
>
> Mandating a broad search neutrality principle would unwisely...lock dominant search engines into a dated model of Internet search and freeze their evolution, even while their rivals would have a free hand to innovate. Such a rule would certainly diminish Google's dominance -- but precisely because it would prohibit Google from meeting customers' needs by offering a more seamless and integrated search and transaction experience.

The fear is baseless, Reback counters. Others' services can be tightly integrated into search results without "send[ing] us back to 10 blue links...The problem is not that Google is integrating or preferencing comparison shopping, it's that Google is integrating its own comparison shopping."

Ultimately, there is a powerful check on Google: customers. The company cares about improving its search algorithm and testing changes to make sure they are what people using Google want. It makes more than 500 changes a year to its search algorithm these days, periodically disclosing its updates [42]. In other words, it's not quite the black box it used to be.

There's evidence that Google can change course when search results that spotlight its services aren't a good idea. In January, Google launched a feature called Search Plus Your World [43] that spotlighted some people's Google+ pages in search results and, if a user was signed in, information from Google+ posts from the user's social network.



Clicking on a "my flights" reminder that can appear in Google search, based on e-mail you've received from airlines through Gmail, leads to a more detailed status display.

Engineers from Twitter, Facebook, and MySpace lambasted the project through a site called Focus on the User [44]. In a video, they pointed out how Search Plus Your World prominently placed Google+ pages for people who weren't actually active on Google+. It was embarrassingly stale information from a company that prides itself on relevance.

Today, though, Google has turned down the Google+ dial in its algorithm. Searches for Felicia Day [45], Wil Wheaton [46], and Ford Motor Company [47] show Google+ results on the first page -- but those three are active on Google+. And Wheaton's and Day's Twitter pages rank higher in search results, as does Ford's Facebook page.

It's not always apparent that Google search changes are for the benefit of the user. Google replaced an earlier service called Google Product Search (nee Froogle), which scoured e-commerce sites for free just like it does other content suppliers, with a pay-to-play program called Google Shopping [48]. Google argued that requiring payment would screen out low-quality retail sites, but it's also screened

out potentially useful major sites such as Amazon, which so far evidently hasn't paid to be part of the program. Longtime Google watcher Danny Sullivan of Search Engine Land called Google Shopping a "mess," [49] though a program that probably will make plenty of money for Google.

But nothing stands still at Google. Today's embarrassment could be tomorrow's triumph.

What's changed now is that Google is, if not too big to fail, too big to escape scrutiny. To prevail, it'll have to convince regulators, not just customers, that it really isn't being evil.

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