

CASE 8

Google: Don't Be Evil Unless . . .

From its start in a garage in Silicon Valley in 1998, Google has become one of the most powerful technology-driven companies in the world. Started by two graduate students at Stanford University as an improvement on the existing Internet search engines, Google's philosophy is to offer everyone in the world free access to all of the information in the world. As a result, the two main objectives of Google as it evolves are to organize the information around the world and "Don't be evil."¹ In 2005, Harris Polling and the Reputation Institute of New York did their annual ranking of the companies with the highest corporate reputation. Google entered the ranking for the first time in 2005 at number three behind Johnson & Johnson and Coca-Cola.²

The Privacy of Gmail

On April 1, 2004, Google announced in a press release that it was offering a new free e-mail system called Gmail.³ The press release also mentioned that this decision was inspired by a customer who complained to Google about her e-mail service's low storage capacity, and inefficient filing and searching technology. Google responded by developing an e-mail service that offered 1-gigabyte of storage capacity (which is equivalent to 500,000 pages of e-mail per user), and an easy way to organize e-mail messages. However, what the email did not announce was that Google would search the contents of its customers' e-mails and design "customized" ads based on the content. This just was the first of many issues in which Google appeared to be caught off guard with negative comments related to its Gmail strategy. Some people even thought the Gmail press release was an April Fool's Day trick pulled by Google's cofounders when Google also announced that day that it was hiring positions for its lunar office.⁴

Google responded to the criticism, which started on April 2, 2004, by stating that no human being would read the customer's e-mail, but a computer program would do an automatic search for key content words. Google also stated that the e-mail system would have enhanced search features for the user to help coordinate the user's e-mails. Customers using Gmail would be able to search their e-mail storage by the traditional sender and by topic or any other search word the user wanted to choose. In addition, Gmail would have more antispam filters to help reduce the number of unwanted e-mails sent to the user's account. However, the underlying issue was whether Google could present this "free" e-mail system to users in which they potentially have their privacy compromised to ensure content-related advertising. Google tried to reduce the privacy fears by stating that the advertising would be used for *only* incoming e-mails and would not be attached to outgoing e-mails. Chris Hoofnagle, who was the associate director of the Electronic Privacy Information Center, compared the Google advertising methods to having a telephone operator listening to your phone calls and

interrupting you with commercial messages when you are talking to another party. When Wayne Rosing, Google vice president of engineering, was asked whether it would be possible for a person writing about pro-life to have abortion advertising inserted in the e-mail, his answer was no because Google does not take advertising revenue concerning sensitive issues. However, he did admit that if the e-mail was talking about politics, an advertisement for a political candidate could be included in the e-mail.⁵

There are also potential problems with matching the content of the e-mails and the associated placement ads. When a Gmail user wrote about a British singer named Lily Allen, an ad for lily and lotus pond plants was placed in the e-mail. Another Gmail user wrote about going to a party in New York and an ad for bachelor party strippers was placed with the e-mail. In summarizing the placement of the ads, the user writing about Lily Allen stated that the ads are creepy when they match up exactly with the discussion and are hilarious when they do not match up with the written content.⁶

Another concern is the legal use of keeping information that is sent through Gmail without the user being protected by the rights given by the Electronic Communications Privacy Act.⁷ The act states that Internet service providers (ISPs) and any other organizations are not allowed to monitor the content of electronic communications unless they have specifically identified a reason to do so, such as filtering spam or preventing the release of confidential information.⁸

The Privacy of Individuals

In a stunning show of hypocrisy, Google punished an entire news agency after one of its reporters searched for and published background information about the company's CEO, Eric Schmidt. It took Elinor Mills from CNETNews.com just 30 minutes to obtain as much relevant information as was available on Schmidt. Using only Google's search capability, Mills discovered that Schmidt was 50 years old, was worth approximately \$1.5 billion, had sold \$90 million in Google stock in the early part of 2005, and had sold another \$50 million in shares in the middle of 2005. She also discovered that Schmidt and his wife, Wendy, live in Atherton, California, and she was able to get his home address from the Federal Election Commission database. Schmidt attended a Democratic fundraiser that cost \$10,000 a plate in 2000. In addition, Schmidt is an amateur pilot.⁹ When Google became aware of the article, Google's director of public relations, David Krane stated that Google would not talk to any reporter from CNET for a year. This reaction seemed to contradict Schmidt's statement in May 2005 that the goal of Google is to organize all the information in the world.¹⁰

Google in China

In 2000, Google began a Chinese language version, which Chinese users could buy. It was operated from the United States through Google.com. In September 2002, Google refused to alter the search results of Chinese users, and the Chinese government blocked Google for a brief period. When the block was lifted from Google 2 weeks later, Chinese users no longer had access to politically sensitive websites. It was discovered that Google had voluntarily excluded several sites from the search results that were not allowed by Chinese censors. These websites are not excluded when users outside of China searched using the same key words.¹¹ Within the Chinese website, Google filtered out search words such as *human rights* and *democracy* from the search results.¹² In addition, antigovernment groups such as Falun Gong will not show up on a Google search. Google has adjusted its search process so it complies with the strict censorship and security laws imposed by the Communist Party in China. In response to a question about whether Google should censor results in China, cofounder Sergey Brin commented that it is a difficult question and the "don't be evil" statement may be open to interpretation regarding what exactly is considered evil. In

September 2004, Google introduced a Chinese version of its news search service. However, the search excludes articles from news sources that the Chinese government considers subversive. Google's response was that it was not worthwhile for the users to get search results that they would not have access to in China.¹³

Google opened offices in China during 2005 and considered it a country for great revenue growth. In January 2006, Google stated that its special version of its search engine for the Chinese customers, called Google.cn, would be available without having any e-mail or blog features.¹⁴ One British blogger commented on Google's restrictions of search words in China by wondering whether the Internet search company also banned the words *spineless*, *hypocritical*, and *cowards*.¹⁵ When a comparison was made searching the word *democracy* in Google's U.S. and Chinese websites, the results were quite different. At Google.com, *democracy* yielded 33,000,000 results with a link to the Taiwanese Democratic Progressive Party's definition ranking second. When *democracy* was searched on Google.cn, less than 20% of the sites selected in the U.S. search were found. In addition, the Taiwanese definition had been omitted from the results, and in its place was the website of the Chinese Communist Party's newspaper.¹⁶ When a search was made for a picture of the Dalai Lama, more than 2,000 pictures were found on Google.com and only one on Google.cn—when the Dalai Lama met members of the Communist Party before 1959. In 1959, the Chinese military invaded Tibet and the Dalai Lama had to escape Tibet and live in exile.¹⁷ In defense to Google's "don't be evil" credo, cofounder Schmidt rationalized that it was better for Chinese users to get the benefit of a speedy, restricted Google search than no access at all. Therefore, Google's solution was the lesser of the two evils. While at a World Economic Forum, Microsoft founder Bill Gates observed that "don't be evil" was not a relative commandment.¹⁸ In February 2006, the *Financial Times* ran an online poll to ask whether Google is now considered evil for censoring the results for Chinese users. Of the 1,400 respondents, 70% believed that Google was being evil for its stand on accommodating the demands of the Chinese government.¹⁹ A representative of the Chinese government stated that the purpose of the restrictions was to ensure that harmful information was not available to Chinese users. The Chinese government's actions are similar to those of newspapers in the United States that stated they would edit or omit any content the editor deemed inappropriate if it was posted to the newspaper's discussion group. The spokesman also stated that only a tiny percentage of websites are blocked from searches by Chinese Internet users.²⁰

On February 15, 2006, Google, Yahoo!, Microsoft, and Cisco Systems were called to participate in a congressional human rights hearing regarding their role in limiting information to Chinese Internet users. Representative Christopher Smith stated that all the companies were involved in a sickening collaboration with the Communist government in China and that they had decapitated the voice of Chinese dissidents by limiting the expression of free speech for people in China. It was revealed in the hearing that Google had learned the most effective ways of filtering out content by examining how the competitors and the Chinese government used software to filter out information.²¹ Google vice president of global communications Elliot Schrage stated that although Google was not ashamed of its actions, it was not proud of what it had done with the design of Google.cn.²²

In June 2006, Jason Dean reported that Internet users in China were having difficulty obtaining access to the Google global site but were not having any problems getting on the Chinese-based site. There was no official response from the Chinese government about why users logging on to Google.com were not successful, yet users had no problems logging into the censored Google.cn.²³ In January 2007, Google—along with Yahoo!, Microsoft, and Vodafone—agreed to establish a set of human rights principles that would include addressing the issue of censorship. This agreement came after the technology companies were pressured by human rights groups, Internet freedom activists, and other interested parties who wanted to see these companies protect individuals' human rights pertaining to the Internet.²⁴

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On January 12, 2010, Google announced that it would stop cooperating with the Chinese government to censor web searches in China using Google.cn. Google threatened to close down its Chinese operations if Google were "forced" to continue to censor the web for its Chinese users. Google stated that it would try to negotiate a new deal with the Chinese government that would provide uncensored results. Along with Google's concern of being hypocritical with its former stance on China and its belief of "don't be evil," it is also important to note that Google was not the market leader in China but was behind Baidu, which is a Chinese company with close ties to the Chinese government. Google's annual revenue in China in 2009 was \$300 million.²⁵ On March 22, 2010, Google shut down its Chinese website and directed its users to go to its uncensored website in Hong Kong. The Chinese government responded by stating that Google did not abide by its contract, which stated that Google must provide filtered results to Chinese users.²⁶ In July 2010, the Chinese government renewed Google's license. Google was allowed to continue to operate a website in mainland China, and it continues to allow users in China to be referred to its uncensored search engine in Hong Kong.²⁷ Google's share of the web search market in China dropped from 36% in the fourth quarter of 2009 to 17.2% in the third quarter of 2011. Google admitted that it is hard to miss out on the world's largest Internet market and announced in January 2012 that it was hiring skilled employees in China to introduce new services to the Chinese consumers. Amir Efrati and Loretta Chao believe that Google wants badly to become a major player in the smartphone market with its Android-based phones.²⁸

Refusing the Justice Department

On January 19, 2006, Google announced that it would vigorously challenge a request by the U.S. Department of Justice (DOJ) for Google to supply to the government information pertaining to Internet searches done on Google. The DOJ subpoenaed Google in August 2005, requesting all website addresses that were located through Google from June 1 to July 31, 2005. The request was to aid the DOJ in defending the Child Online Protection Act of 1998, the purpose of which was to protect minors from being exposed to sexually explicit material available on the web.²⁹ The DOJ wanted to use the data from Google to determine the effectiveness of filtering software compared with the protections that are supported in the 1998 act. The DOJ wanted to take the data from Google and use the more current filtering software that is commercially available to see how successful the current filters would be in excluding explicit websites from the search results. The Child Online Protection Act has faced a number of legal challenges. In 2004, the Supreme Court did not overturn an injunction that had been filed to block the enforcement of the law.³⁰ In October 2005, Google told the government that the DOJ request would imply that Google would be willing to reveal information pertaining to its users, which was unacceptable to Google. Google described the request as too vague, burdensome, and a form of harassment. Google also stated that the request would take up too much of Google's time and resources and that it would threaten Google's competitive advantage by exposing its proprietary secrets. When the DOJ tried to get Google to provide a list of 1,000,000 website addresses that are available via a Google search for only 1 week without any identification of who the users were, Google did not accept this compromise. Google continued to be firm that its decision stating that the DOJ request overreached what is expected from Google for compliance. The DOJ responded by stating that Yahoo!, Microsoft, and America Online were also subpoenaed in August 2005, and all three of Google's competitors complied with the government's request.³¹ In March 2006, Google refused the DOJ's revised request for Google to provide 50,000 web addresses and 5,000 searches, of which the government would use 10,000 websites and 1,000 searches in testing its filters.³² On March 17, 2006, a federal judge ordered Google to give the DOJ some search data including 50,000 websites but not the 5,000 sample searches.³³

As a number of critics have pointed out, it appeared ironic that Google was a committed defender of privacy and freedom to control its data in the United States yet appeared to agree with every limitation the Chinese government had requested for its Chinese website.

Scanning Copyrighted Material and Other Copyright Issues

In December 2004, Google announced that it would scan the pages of the books located in various libraries across the world, including those of Harvard University, Stanford University, the University of Michigan, and Oxford University. This Google Books Library Project would have given Google users access to online copies of out-of-copyright books for no charge as well as copyright-protected works, which would have partial content available. Critics were quick to point out that the program was an attempt to violate copyright laws by having copyrighted material available online without consent of the author. Google's response was that publishers could decide whether to participate in the program or not.³⁴ On September 20, 2005, three authors sued Google for copyright infringement. All of the authors claimed that they had copyrighted material in at least one of the libraries that Google was using. In addition, they stated that they did not give permission to Google to copy their material. The lawsuit stated that Google should have been aware of the Copyright Act and should not have started the process of copying material without consent from the authors. The lawsuit claimed that the Google Print for Libraries program is not covered under the "fair use" rule for reproducing copyrighted material.³⁵ On October 19, 2005, five publishing companies located in the United States—Pearson Education, McGraw-Hill, Penguin Group, Simon & Schuster, and John Wiley & Sons—filed a copyright infringement lawsuit against Google for the Google Print for Libraries program.³⁶

In September 2006, a Belgian court ruled that Google must stop publishing content from Belgian newspapers without permission. If Google did not comply, it would face a fine of as much as 1 million euros, or \$1.27 million, per day.³⁷ Google appealed the ruling but on May 5, 2011, the Court of Appeal in Brussels upheld the 2007 lower court ruling.³⁸

In October 2006, Google acquired YouTube for \$1.65 billion. With the free access video website, YouTube comes with additional copyright issues. As was the case with Google, YouTube had copyrighted material on its website in which the copyright holders neither gave permission nor received a fee.³⁹ In November 2006, Google announced that its own video site, Google Video, had been served a copyright lawsuit by Viacom for having copyrighted material on the site without permission or compensation. As a result, five different Google services faced copyright challenges: Google Web Search, Google News, Google Images, Google Books, and Google Video.⁴⁰ Jason Fry estimated that Google had set up a reserve of \$500 million to resolve copyright issues that were related to the acquisition of YouTube.⁴¹ Six years later Viacom's suit remained unresolved. Google won an appeal in 2012, but on April 5, 2012, the U.S. Court of Appeals in Manhattan reversed the lower court's decision to throw out the case before trial.⁴²

The Association of American Publishers agreed on October 4, 2012, to an out-of-court settlement with Google. Basically, the settlement offered the same deal that Google had offered copyright owners with books in Google's Library Project from the start: copyright owners whose books were scanned by Google under its Library Project could request that their books be removed. What will remain unknown is if a monetary settlement was involved, and if so, how much, because the suit was private and the details, therefore, will be kept confidential.⁴³ While the agreement settled the lawsuit brought against Google by Pearson Education, McGraw-Hill, Penguin Group, Simon & Schuster, and John Wiley & Sons, it did not resolve disputes between the other parties involved in the lawsuit, including the Authors Guild.⁴⁴

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request to dismiss the case by reasoning that YouTube's practice of removing infringing videos upon the request of the copyright holder protected Google from liability.⁴⁵

The Role of Click Fraud

Ninety-nine percent of Google's revenue comes from advertisers who pay Google every time a user clicks on the ads that are displayed within the Google results. The question that arises is this: Was the clicking of the ad a valid attempt by the user to examine the advertising of the firm, or was the click used in a fraudulent manner? It would be potentially beneficial for an unethical competitor to use click fraud to increase the overall advertising costs that would be paid to Google based on the number of recorded clicks. Another source of click fraud could be from businesses that allow Google advertising and split the revenue with Google under Google's AdSense program.⁴⁶ In addition, what role should Google have in verifying the accuracy of this critical revenue stream? Some estimates calculate that 20% of all clicks are fraudulent. In addition, critics of Google stated that the company is not responsive to the concerns its advertisers have about click fraud.⁴⁷ On March 8, 2006, Google agreed to settle a lawsuit for \$90 million, including cash and advertising credits, by companies that paid click fees for their advertising on Google. The suit was originally filed by Lane's Gifts & Collectibles in Texarkana, Arkansas, a retailer that claimed it was paying for fraudulent clicks to its advertisement on Google. The lawsuit alleged that Google improperly charged retailers for clicks that were fraudulent. The settlement allowed any Google advertiser in the United States from 2002 to 2006 to make a claim for being overcharged for its advertising by Google.⁴⁸ Online advertisers spent more than \$800 million on advertising that was based on fraudulent clicks. If true, that represents 14.6% of the \$5.5 billion spent on online advertising in the United States in 2005.⁴⁹

In July 2006, Google announced that it was introducing a new software program that would analyze the level of fraudulent clicks for its customers. An existing software program by a monitoring consulting firm called Click Forensics developed a "Click Fraud Index," which summarized the monthly percentage of fraudulent clicks. 13.7% of clicks on search engine web pages were fraudulent in the first quarter of 2005, and that number had increased to 14.1% for the second quarter of 2005.⁵⁰

The Privacy Issues Continue: The Sting of Buzz

On February 9, 2010, Google introduced Google Buzz, which is a combination of the features of Facebook and Twitter. When Buzz was linked to Gmail, the users of Buzz opened a new account; they were automatically given a network of "friends" that were selected by Google. Google determined the user's "friends" by identifying people with whom the user communicated on Gmail and chat services. Google managers thought this was an efficient shortcut for the user because the user did not have to manually add each new friend. The users were not impressed. They complained that this was a blatant invasion of privacy and that Google did not ask permission of the user to share a Buzz contact with another user. Google officials did not take into consideration that communication such as e-mail can contain private information that the user would not want to share with anyone, including contacts for obtaining illegal substances or names of illicit lovers. One woman who writes a blog complained that she now feels fearful because her abusive ex-husband or writers who e-mailed her hostile comments now have her contact information. In addition, governments could use Buzz to identify contacts from subversives within their country. Google responded by stating that many users liked the convenience of the feature, and users can hide the list of Buzz contacts with a single click.⁵¹ In September 2010, Google agreed to settle private class-action lawsuit filed by seven users of Gmail who had their private information linked on Buzz. Google agreed to pay \$8.5 million, with most of money being allocated to help fund organizations whose mission is related to Internet privacy. Google

also agreed to make future announcements concerning the privacy aspects of Buzz but denied that the company violated any laws.⁵² In March 2011, Google settled with the Federal Trade Commission by agreeing to establish stricter privacy rules related to its Buzz program. In addition, Google agreed to develop a "comprehensive privacy program" and must submit to an independent audit every 2 years for the next 20 years.⁵³ On October 14, 2011, Google announced that it would retire Buzz in a few weeks, and replace it with a new social network, Google+.⁵⁴

Global Privacy Issues

Content Issues

In February 2010, three Google executives were convicted of violating Italian privacy laws. The Italian court interpreted the role of Google as not just a search engine but as a media company like newspapers or television that provide content that needs to be regulated. The Italian court determined that Google is ultimately responsible for text, photographs, or videos that are available by third parties and are released to the public through Google or YouTube. In the Italian case, Google was accused of not acting quickly enough to remove a video that was posted in 2006 and showed a group of teenagers harassing an autistic boy. The Google executives were sentenced to six-month suspended sentences for violation of privacy.⁵⁵

Street View

In April 2010, privacy officials from 10 countries sent Google a letter that demanded that the company develop more privacy protections for its users. Representatives from Canada, France, Germany, Ireland, Israel, Italy, the Netherlands, New Zealand, Spain, and the United Kingdom all raised concerns about Google's lack of commitment to user privacy.⁵⁶ In May 2010, European officials were furious when Google informed them in response to their letter that Google had systematically collected private data since 2006 when Google was developing its Street View photo archive. The German government stated that Google violated privacy laws by illegally tapping into private networks to obtain the information. The German government concluded that privacy was a foreign concept to Google. Google was collecting data about locations of wireless networks and collected private information related to those networks.⁵⁷ The German government, followed by the governments of six other European countries, demanded that Google preserve the data it had obtained without permission from unsecured wireless networks. Joining Germany were Belgium, the Czech Republic, France, Italy, Spain, and Switzerland in requesting the information from Google. In total, Google had collected information from unsecured wireless networks from 33 countries. Google downplayed the value of the data, stating that it consisted of fragments from webpages and e-mail messages and claimed the data were inadvertently collected through a programming error. Three other countries, Denmark, Austria, and Ireland, requested that Google destroy all the data that was collected.⁵⁸ In October 2010, Google announced that it was toughening privacy controls and improving employee training and compliance procedures to ensure this unauthorized collection of data does not happen in the future.⁵⁹ On the same day, Google admitted that it had captured entire e-mails, URLs, and passwords during the Street View program development.⁶⁰ In March 2011, French regulators fined Google \$142,000 for not being forthcoming with information⁶¹ pertaining to the collection of data during the Street View program development.

Android Smartphones

In a continuing theme of privacy violations, Google has also demonstrated invasion of privacy with its Android smartphones, which transmit their locations back to Google. The benefit for Google

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is that it can use this information that pinpoints the user's location for location-based services. Every few seconds, the smartphone transmits data to Google including the name, location, and signal strength of any Wi-Fi networks within a certain distance of the phone. This data are transmitted regardless of whether the user is using a location app or not.⁶² In June of 2012, the U.S. National Telecommunications and Information Administration announced that it would address the issue of developing mobile privacy standards by holding a series of meetings with mobile carriers, app developers, and other stakeholders.⁶³

New Privacy Policy

In January 2012, Google announced that starting on March 1, 2012, it would utilize user information from multiple Google platforms including Google, YouTube, Google+, Android phones, and Gmail to coordinate data about the user to help make the search process "easier." This integrated information will be used to "customize" the user's search results based on the user's own preferences. Julia Angwin assumes that one reason for this integration is to give Google the ability to sell data "packages" of individual user information just as Facebook does.⁶⁴

Anyone who is a registered user of Gmail, Google+, YouTube, or other Google products cannot prevent Google from combining the personal data it collects from all its services. But users can minimize the data Google gathers by making sure they are not logged into one of Google's services when they are using Google's search engine, watching a YouTube video, or perusing pictures on Picasa. Google does offer the option to delete users' history of search activity. Google can still track users even when they are not logged in to one of its services, but only through a numeric Internet address attached to the computer or an alphanumeric string attached to the Web browser, and not by the user's name.⁶⁵

Privacy and Safari

The research of a Stanford professor and the *Wall Street Journal*, has shown that in February 2012 Google had bypassed the privacy setting of millions of smartphones and computers and was tracking the browsing habits of users who had "blocked" this type of monitoring. Google had developed a special computer code that fools Apple's Safari Web-searching software into allowing Google to monitor numerous users. The default mode for the Safari software for both the computer and the smartphone is to block this type of monitoring. Of the top 100 websites, 22 sites installed the Google tracking software on the test computer. Once the software is linked to the computer or smartphone, it will continue to track web searching after the initial website has planted the software on the machine.⁶⁶

QUESTIONS FOR THOUGHT

1. Given its mission of providing information to the world, should Google censor searches in China?
2. Why do you think Google was adamant about not wanting to supply information requested by the government concerning the Child Online Protection Act? Explain your position.
3. What do you think Google's rationale was for starting its Google Books Library Project?
4. Of all the issues discussed in this case, which issue is the most disconcerting to you. Why?