

1 Robert W. Dickerson, Jr. (SBN 089367)
E-mail: rdickerson@bwslaw.com
2 BURKE, WILLIAMS & SORESENSEN, LLP
444 South Flower Street, Suite 2400
3 Los Angeles, CA 90071-2953
Tel: 213.236.0600
4 Fax: 213.236.2700

5 Patricia L. Peden (SBN 206440)
E-mail: ppeden@bwslaw.com
6 BURKE, WILLIAMS & SORESENSEN, LLP
1901 Harrison Street, Suite 900
7 Oakland, California 94612-3501
Tel: 510-273-8780
8 Fax: 510-839-9104

9 Lenny Huang (SBN 264386)
E-mail: lhuang@bwslaw.com
10 BURKE, WILLIAMS & SORESENSEN, LLP
60 South Market Street, Suite 1000
11 San Jose, California 95113-2336
Tel: 408-606-6300
12 Fax: 408-606-6333

13
14 Attorneys for Plaintiff
RUMBLE, INC.

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

19
20 RUMBLE, INC.,

21 Plaintiff,

22 v.

23 GOOGLE LLC and DOES 1-10,
inclusive,

24 Defendants.

Case No. 4:21-cv-00229-HSG

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF DUE TO ANTITRUST
VIOLATIONS**

Judge: Hon. Haywood S. Gilliam, Jr.

25
26 For its first amended complaint against defendant Google LLC (“Google” or
27 “Defendant”), plaintiff Rumble, Inc. (“Rumble”) alleges as follows:
28

INTRODUCTION

1
2 1. Rumble brings this action under Section 2 of the Sherman Act, (15
3 U.S.C. §2), and Sections 4 and 15 of the Clayton Act (15 U.S.C. §§ 4 and 15),
4 against Google for monetary damages well in excess of \$2,000,000,000 that
5 Rumble has sustained and continues to sustain as a proximate result of Google's
6 antitrust violations, and for injunctive relief to prevent Google from monopolizing,
7 attempting to monopolize, and continuing unlawfully to maintain its monopoly in
8 the relevant market – online video sharing and viewing services or platforms (the
9 “online video platform market”) – through anticompetitive and exclusionary
10 practices.

11 2. These practices include Google rigging searches purposefully and
12 unlawfully to always give preference to Google's YouTube video platform over
13 Rumble (and other platforms) in Google search results, such that the Google search
14 page result for online videos lists links to the YouTube site as the first search
15 results, even if the search specified Rumble, such as “dog videos on rumble.”

16 3. By unfairly rigging its search algorithms (or through other means or
17 mechanisms) such that YouTube is the first-listed links “above the fold” on its
18 search results page, Google, through its search engine, was able to wrongfully
19 divert massive traffic to YouTube, depriving Rumble of the additional traffic, users,
20 uploads, brand awareness and revenue it would have otherwise received.

21 4. Google has also engaged in exclusionary conduct by which it has
22 wrongfully achieved and has maintained its dominance and monopoly power in
23 search in the increasingly mobile ecosystem and has also thereby attempted to
24 monopolize and has monopolized the online video platform market. Google's
25 conduct in this regard is similar to a “bait and switch” scheme, whereby Google
26 acquired the Android operating system, and made it “open source,” meaning that it
27 was free for anyone to use. That was the “bait.” Otherwise skeptical
28 manufacturers of smart devices such as mobile phones were lured by that bait, and

1 assuming they could adopt the now-open-source Android operating system for their
2 devices without having to pay a licensing fee, develop their own system, or
3 relinquish control over their own devices, did so, such that all but Apple adopted
4 the Android operating system. This in turn caused independent, third party app
5 developers, who of course wanted their apps to have the largest possible potential
6 consumer pool, to develop their apps to be compatible with the Android system.
7 Google then created apps (such as Google Play, which is an online app superstore)
8 and other functionalities (that will be described in detail below) that became gotta-
9 have items for manufacturers and distributors of smart devices if they wanted to be
10 able to compete in the marketplace. This allowed Google to do what had generally
11 been thought to be impossible – control that which it had given away to all for free
12 (*i.e.*, the basic Android operating system).

13 5. Now came the “switch.” These manufacturers and distributors found
14 themselves in a position that in order to obtain these gotta-have items which could
15 only be obtained from Google, they had to agree to various Google-imposed
16 agreements. For example, one such agreement forced Android-based smartphone
17 manufacturers to include, among others, YouTube as a preinstalled app on their
18 phones (and to give it a preferred location on the phone’s default opening page, and
19 make it undeletable by the user).

20 6. This conduct has damaged and continues to damage Rumble by further
21 self-preferencing YouTube over Rumble (and other platforms, which harms
22 competition generally in the online video platform market, damages Rumble
23 specifically, and harms consumers). Because much of the online searching for
24 videos is now done on smartphones, this further ensures that Google’s YouTube
25 platform receives unfair preferential treatment. Google thus engaged in
26 exclusionary conduct to wrongfully acquire and maintain a monopoly over the
27 online video platform market. Google’s exclusionary conduct has included
28 contractual and other vertical restrictions that limit competitors’ access to, and

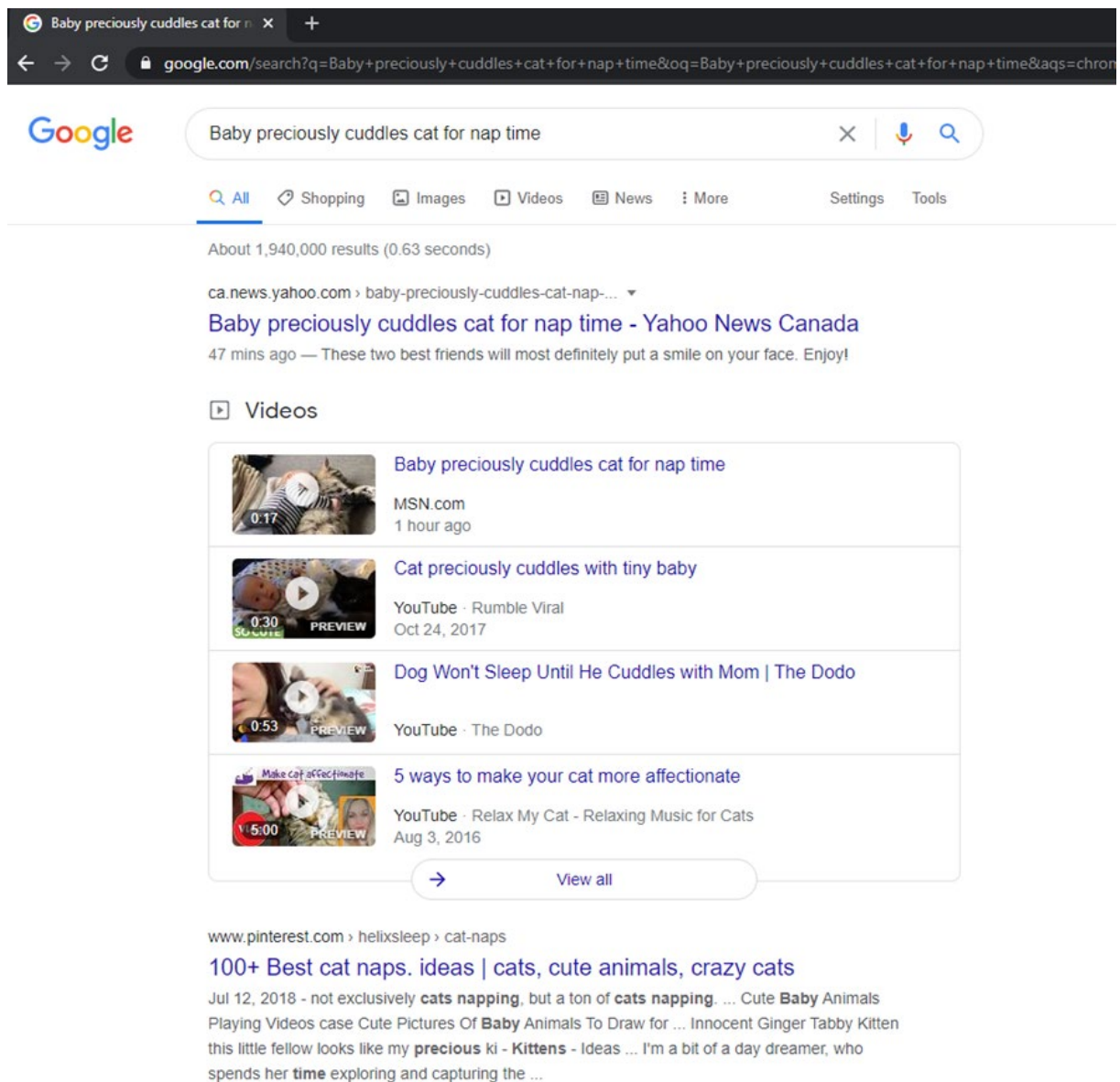
1 ability to compete in, the online video platform market.

2 7. Rumble is unique among companies attempting to compete in the
3 online video platform market in that it has an extensive catalog of exclusively-
4 assigned original content videos, thus differentiating itself from other online video
5 platforms. Rumble receives between \$10 and \$30 per thousand views of its
6 exclusive videos on its platform, but when that search traffic has been diverted to
7 YouTube through Google's wrongful conduct, Rumble has received only forty-
8 eight cents (\$0.48) on average per thousand views of its videos from
9 Google/YouTube. It is Google's unlawfully acquired monopoly power in the
10 relevant market that has allowed it to pay so little, and keep so much, of the
11 advertising revenue.

12 8. Unlike other websites or video platforms, Rumble, with its thousands
13 of high value exclusive video assets which it has syndicated to YouTube (which
14 have generated billions of views on YouTube), has the unique ability to discover,
15 track and determine its damages both on its exclusive and on its non-exclusive
16 catalog, which have been proximately caused by Google's unlawful conduct.
17 Notably, this conduct is also in violation of Google's own duplicate content and
18 original sourced reporting best practices which it purports to follow, but evidently
19 does not.

20 9. Set forth below are screenshots (Figures 1 and 2) showing a recent
21 example of this unlawful self-preferencing by Google of its own video platform,
22 YouTube. The searched-for video is entitled "Baby preciouslly cuddles cat for nap
23 time." It is a Rumble exclusive video, so Rumble is the original source for that
24 video. That title – "Baby preciouslly cuddles cat for nap time" – is verbatim how it
25 is listed on the Rumble platform. Because Rumble is the original source, it was
26 able to syndicate (*i.e.*, release) the video to whom and when it chose. In this
27 instance, to test whether the Google search algorithms were rigged (and/or Google
28 was otherwise manipulating the search results) to give unfair preference to

1 YouTube, Rumble “handicapped” YouTube by releasing the video to
 2 Google/YouTube last.



23 Figure 1

24 10. Figure 1 depicts the Google search results page for a search for “Baby
 25 preciouslly cuddles cat for nap time.” This search was made after Rumble released
 26 this video only to MSN and Yahoo, and before Rumble released it to YouTube. As
 27 seen, Yahoo is listed first, followed by MSN and then followed by multiple
 28 miscellaneous unrelated YouTube videos that do not contain, in fact, are not even

1 close to, the searched-for title, and are quite dated; for example, a YouTube video
2 from 2016 entitled “5 ways to make your cat more affectionate.” Significantly, a
3 link to this exclusive Rumble video is not even listed on the Google search page
4 results, even though the MSN listing provides a canonical URL referring to
5 Rumble’s original page and identifying Rumble as the original source. Google
6 even lists its dated and unrelated YouTube videos ahead of Rumble.com’s listing.
7 In fact, Rumble.com’s listing is nowhere to be found despite all the credit,
8 linkbacks, canonicals and submission to Google Webmaster Tools that identified
9 Rumble as the original source for this video prior to the Google search, the results
10 of which are shown in Figure 1.

11 11. Prior to the search shown in Figure 1, Google was made aware that
12 this “Baby preciously cuddles” video was a Rumble exclusive and original asset by
13 multiple means; for example, no webpages prior to Rumble had duplicate metadata;
14 MSN’s canonical URL pointed to Rumble.com as the original source; Yahoo also
15 references Rumble; there is even a linkback to Rumble’s URL on the YouTube
16 video; and by an automatic sitemap submission to Google Webmaster Tools.
17 Pursuant to Google’s publicly stated policies, Rumble should have been elevated in
18 the search results (actually should have been listed first), and even though the
19 search was for the exact title for the video as on Rumble’s platform, the Rumble
20 platform is not even listed at all on the Google search page for this specific Rumble
21 video.

22 12. Once the Rumble URL was documented to be indexed in Google
23 according to Webmaster Tools, and both Yahoo and MSN took the lead on the
24 search results, Rumble decided to provide the video to YouTube with credit and
25 linkbacks to the Rumble.com website. As shown in Figure 2 below, which is a
26 screen shot of the Google search and search page results for the search on
27 November 24, 2020, about 2 hours after Figure 1 was taken (and after Rumble
28 released the video to YouTube), Google immediately gives the top listing to

1 YouTube, de-ranks both Yahoo and MSN, lists a very different and very dated
 2 YouTube video with dissimilar title in the 4th spot, and still avoids listing Rumble:

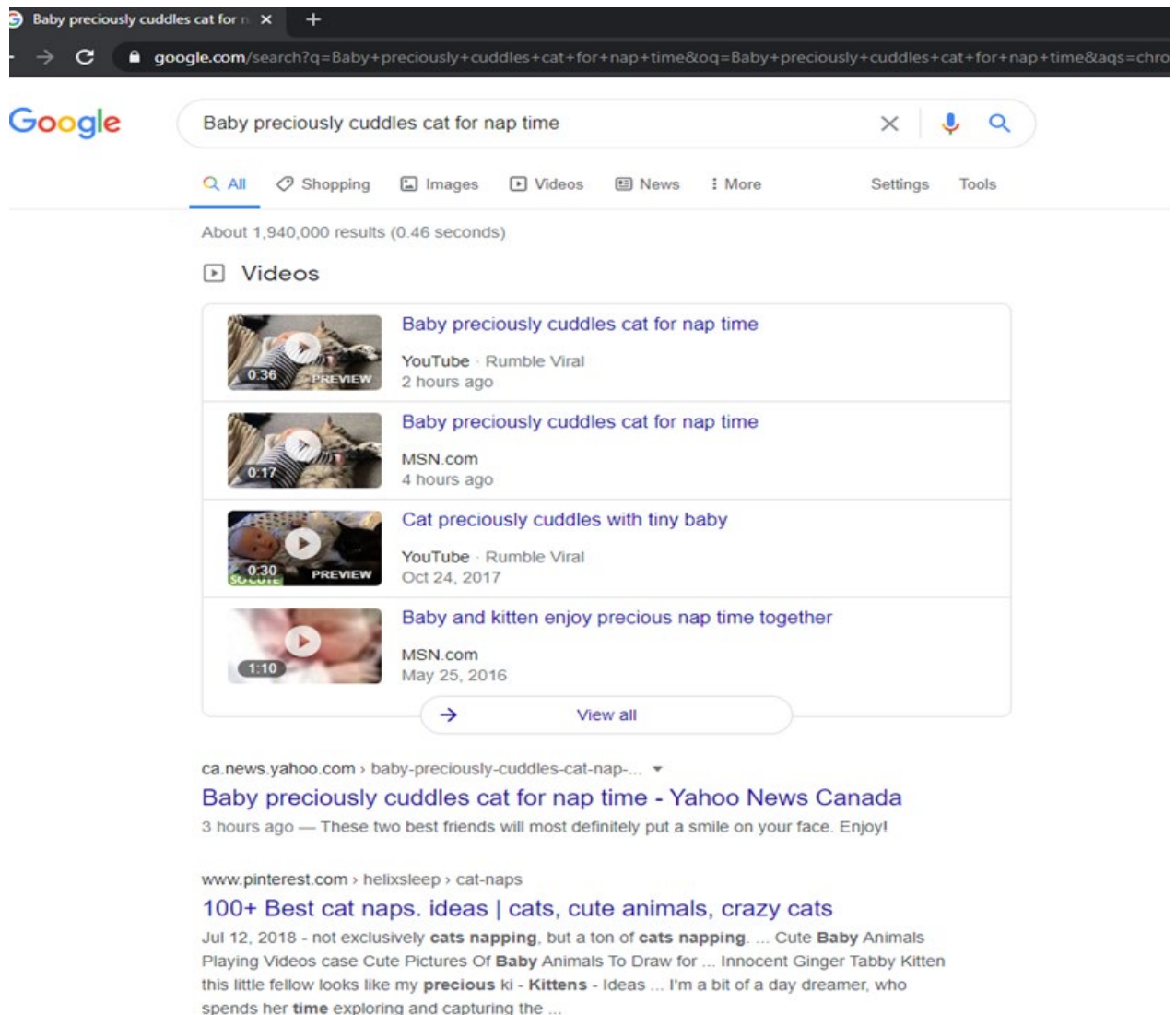


Figure 2

13. Amazingly, even though Rumble is the original source for this video,
 even though Google was aware of that fact, even though the search term was
 verbatim the title for the video as on Rumble's platform, even though all sources
 point back to Rumble as the original content source, and even though the video was
 released to Google/YouTube last in time, the Google search results still listed
 YouTube's platform first, and doesn't list Rumble at all on its first page of search
 results, clearly evidencing Google's self-preference of YouTube over competitors.

**RUMBLE AND THE SERVICE IT PROVIDES
FOR INDIVIDUAL CONTENT CREATORS**

14. Since 2013, Rumble has operated an online video platform. Today, Rumble is one of the most respected independent and privately owned companies in the online video platform industry and market, and its business model is premised upon helping the “little guy/gal” video content creators monetize their videos.

15. Video content creators upload their copyright-protected videos to the Rumble platform (rumble.com or app), many of whom exclusively assign to Rumble the licensing and enforcement rights in the uploaded video. Rumble in turn makes these videos (“Rumble Videos”) available under license to other companies who have websites or other social media sites, and who want to make those videos available to visitors to their sites in order to generate advertising revenue.

16. Since its launch in 2013, Rumble Videos have received approximately 9.3 billion views worldwide just on YouTube alone according to YouTube’s Analytics.

17. The original author (the content-creator) of the video should be compensated for the publication of his or her video. More often than not in the past, however, he or she was not. This is where Rumble came and comes into the picture.

18. Rumble provides an important service to the untold number of “little guy/gal” videographers who create the video content that is uploaded to the internet, enjoyed by millions, and monetized by only a few. By themselves, these individual content-creators cannot effectively monetize their videos, even those that go “viral” and obtain millions of views within the first few days of being available online.

19. Rumble provides a platform for those individual content-creators to monetize their copyrighted videos. By simply appointing Rumble as their exclusive licensee to their copyrighted video(s), and then uploading their video(s) to

1 Rumble's platform, Rumble takes over and does all the rest. Rumble makes its
2 portfolio of exclusively-licensed videos available to others to use for a fee (and a
3 portion of the downstream revenue collected by the user), monitors that use,
4 collects the fee (and revenue), and shares it with the content-creator. There are
5 some individual content-creators who are receiving royalties in the 6-figures
6 annually, and many that are receiving annual 5-figure royalties from Rumble.

7 20. Rumble's platform and proprietary software sources, validates,
8 provides clearance management, distribution and monetization for video content.
9 It is a content-creator-centric platform, whose main goal and core business model
10 has always been to help video creators increase distribution and monetize their
11 videos. Rumble allows video creators to create channels, host, share, monetize and
12 distribute their video content from one centralized account on the Rumble platform.

13 21. Rumble has working relationships with some of the most respected
14 video creators, and Rumble licenses video content through its revenue-share video
15 player and, if licenses permit, through other video players to many very well-known
16 websites, including some of the largest and most well-known companies and
17 websites in the world.

18 22. Rumble currently has more than 2 million amateur and professional
19 video content-creators that now contribute to more than 100 million streams per
20 month. Some of the top video content-creators use Rumble's platform. Rumble's
21 creator-centric platform has enabled more of these amateur and professional video
22 content-creators, media companies, and celebrities to distribute and monetize their
23 social videos more than ever before.

24 23. Rumble's success, however, has been far less than it could and should
25 have been as a direct result of Google's unlawful anticompetitive, exclusionary and
26 monopolistic behavior, and coincided with Google's unlawful rise to monopoly
27 prominence in the search engine market as detailed in the recently filed case *United*
28 *States of America et. al. v. Google LLC*, Case 1:20-cv-03010, Document No. 1,

1 10/20/2020 (D.D.C.) (“the DOJ Complaint”). Using that ill-gotten prominence,
2 Google promoted YouTube to the exclusion of other online video platforms,
3 including specifically Rumble, to obtain and maintain an unlawfully-achieved
4 monopoly in that market as well.

5 24. When video content creators upload their videos to Rumble’s platform,
6 those videos are then available for viewing on Rumble’s website, generating
7 advertising revenue. Unlike most video platforms, Rumble obtains an exclusive
8 license for many of the uploaded videos. Even though Rumble has the exclusive
9 license to these videos, because of the monopoly Google has obtained for its
10 YouTube platform through its unlawful anti-competitive conduct, Rumble must
11 syndicate its exclusive videos to YouTube in order to survive. Notably, other video
12 platforms do not have a large exclusive catalog to syndicate. Rather, their revenue
13 depends on non-exclusive licenses for the videos uploaded by their creators – the
14 same way YouTube operates. Those other video platforms solely depend on
15 growth from search traffic to their non-exclusively uploaded videos, which they
16 will monetize.

17 25. Google’s conduct in this regard has not only harmed Rumble, but also
18 other similarly situated online video platforms throughout the world, who have
19 been deprived of the views, users, uploads, traffic and brand awareness needed to
20 survive and prosper. As testament to this fact, since Google purchased YouTube in
21 2006, the number of competitive video platforms has dwindled dramatically as
22 other platforms were not able to survive as a direct result of Googles’ unlawful and
23 exclusionary conduct.

24 26. Indeed, the extensive unlawful and exclusionary tactics and willful
25 misconduct as meticulously detailed in the DOJ Complaint (and also herein) expose
26 the many ways in which Google illegally achieved and now maintains monopoly
27 power in the internet search engine market, and equally expose Google’s game
28 plan, mindset and goal that have motivated it to do so across the entire expanse of

its empire, including the relevant market here. Google has executed that illegal game plan to near perfection to achieve and maintain a monopoly in the online video platform market, and thereby to achieve a monopolist's profits and to drive out meaningful competition, to the great disadvantage and damage to Rumble (and the content creators for its exclusive videos) and to competition in the online video platform market.

GOOGLE'S UNLAWFUL ANTICOMPETITIVE CONDUCT

27. Google has willfully and unlawfully created and maintained a monopoly in the online video platform market by pursuing at least two anticompetitive and exclusionary strategies. First, by manipulating the algorithms (and/or other means and mechanisms) by which searched-for-video results are listed, Google insures that the videos on YouTube are listed first, and that those of its competitors, such as Rumble, are listed way down the list on the first page of the search results, or not on the first page at all. Second, by pre-installation of the YouTube app (which deters smart phone manufacturers from pre-installing any competitive video platform apps) as the default online video app on Google smart phones, and by entering into anti-competitive, illegal tying agreements with other smartphone manufacturers to do the same (in addition to requiring them to give the YouTube app a prime location on their phones' opening page and making it not-deletable by the user), Google assures the dominance of YouTube and forecloses competition in the video platform market.

28. Google's first anticompetitive and exclusionary strategy has been recently confirmed and reported in the Wall Street Journal:

When choosing the best video clips to promote from around the web, Alphabet Inc.'s Google gives a secret advantage to one source in particular: itself.

Or, more specifically, its giant online-video service, YouTube.

1 Take a clip of basketball star Zion Williamson that the National
2 Basketball Association posted online in January, when he made his
3 highly anticipated pro debut. The clip was popular on Facebook Inc.,
4 drawing more than one million views and nearly 900 comments as of
5 March. A nearly identical YouTube version of the clip with the same
6 title was seen about 182,000 times and garnered fewer than 400
7 comments.

8 But when The Wall Street Journal's automated bots searched Google
9 for the clip's title, the YouTube version featured much more
10 prominently than the Facebook version.

11 The Journal conducted Google searches for a selection of other videos
12 and channels that are available on YouTube as well as on competitors'
13 platforms. The YouTube versions were significantly more prominent
14 in the results in the vast majority of cases.

15 This isn't by accident.

16 Engineers at Google have made changes that effectively preference
17 YouTube over other video sources, according to people familiar with
18 the matter. Google executives in recent years made decisions to
19 prioritize YouTube on the first page of search results, in part to drive
20 traffic to YouTube rather than to competitors, and also to give
21 YouTube more leverage in business deals with content providers
22 seeking traffic for their videos, one of those people said.

23 "All else being equal, YouTube will be first," the person said.

24 Reprinted from article entitled "*Searching for Videos? Google Pushes YouTube*
25 *Over Rivals*", The Wall Street Journal, by Sam Schechner, Kirsten Grind and John

26 ///

27 ///

West, posted online July 14, 2020 at 12:47 pm EDT (“the WSJ Article”).¹

29. Similarly, a Report issued by the House of Representatives also found that Google has engaged in the unlawful anti-competitive self-preferencing activity:

Although these four corporations [including Google] differ in important ways, studying their business practices has revealed common problems. First, each platform now serves as a gatekeeper over a key channel of distribution. By controlling access to markets, these giants can pick winners and losers throughout our economy. They not only wield tremendous power, but they also abuse it by charging exorbitant fees, imposing oppressive contract terms, and extracting valuable data from the people and businesses that rely on them. Second, each platform uses its gatekeeper position to maintain its market power. By controlling the infrastructure of the digital age, they have surveilled other businesses to identify potential rivals, and have ultimately bought out, copied, or cut off their competitive threats. **And, finally, these firms have abused their role as intermediaries to further entrench and expand their dominance. Whether through self- preferencing, predatory pricing, or exclusionary conduct, the dominant platforms have exploited their power in order to become even more dominant.**

To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons. Although these firms have delivered clear benefits to society, the dominance of Amazon, Apple, Facebook, and Google

¹ <https://www.wsj.com/articles/google-steers-users-to-youtube-over-rivals-11594745232>.

1 has come at a price. **These firms typically run the marketplace**
 2 **while also competing in it—a position that enables them to write**
 3 **one set of rules for others, while they play by another, or to**
 4 **engage in a form of their own private quasi regulation that is**
 5 **unaccountable to anyone but themselves.**²

6 30. The House Report also included a section that was especially damning
 7 as to Google’s conduct at issue here:

8 In July, the Wall Street Journal reported that Google also gives
 9 preferential treatment to YouTube. Tests conducted by the Journal
 10 found that searching Google for videos delivered YouTube in results
 11 much more prominently than competing video providers, even when
 12 competitor videos had more engagement. Reflecting interviews with
 13 those familiar with the matter, the piece stated that **Google engineers:**
 14 **[M]ade changes that effectively preference YouTube over**
 15 **other video sources. Google executives in recent years made**
 16 **decisions to prioritize YouTube on the first page of search results,**
 17 **in part to drive traffic to YouTube rather than to competitors,**
 18 **and also to give YouTube more leverage in business deals with**
 19 **content providers seeking traffic for their videos.”**

20 In response to Questions for the Record from Subcommittee
 21 Chairman David N. Cicilline (D-RI), the company denied that Google

23 ² Report entitled *Investigation of Competition in Digital Markets, Majority Staff*
 24 *Report and Recommendations*, released on October 6, 2020, by the United States
 25 Congress, House of Representatives, Subcommittee on Antitrust, Commercial and
 26 Administrative Law of the Committee on the Judiciary (“the House Report”), pages
 27 6-7 (emphasis added).
 28

1 Search is designed to favor YouTube. **Although Google stated that it**
 2 **disagreed with the methodology used by the Journal, Google did**
 3 **not provide the Subcommittee with any data or internal reports**
 4 **that would support its claim.**³

5 31. Google did not provide the Subcommittee with any such refuting data
 6 or internal reports because it could not do so – the statements made in the WSJ
 7 Article are true, which Rumble has confirmed through its own tests as detailed in
 8 this First Amended Complaint. Significantly, it appears that Google’s denials were
 9 part and parcel of its ongoing attempt to conceal its unlawful anticompetitive and
 10 exclusionary behavior.

11 32. Google has engaged and continues to engage in this unlawful conduct
 12 which has proximately caused and continues to cause tremendous damage to
 13 Rumble (and to others seeking to compete in the online video platform market), to
 14 competition and to consumers.

15 33. In this regard, the House Report also includes this relevant section,
 16 which addresses one of the ways that Google’s unlawful anti-competitive conduct
 17 injures its competitors:

18 Numerous market participants noted that Google’s favoring
 19 of its own sites and demoting those of third parties has
 20 effectively increased their cost of distribution. Since demoted
 21 sites can generally only recover traffic through advertising on
 22 Google, the platform “essentially requires competitors to pay for
 23 their websites to appear above Google’s own links,” according
 24 to one market participant. Another business recalled that in 2016
 25 Google demoted one of its vertical offerings, citing a policy of
 26 diversifying content. The firm stated that once it was penalized
 27

28 ³ The House Report, page 191 (emphasis added) (footnotes omitted).

1 in organic rankings, it “could not get an appropriate customer
2 service response for months” and ultimately “had to increase
3 [marketing spend on Google] to regain lost traffic—a win-win
4 for Google but a loss for [our business] and its users.

5 **Meanwhile, Google’s own competing vertical “is always**
6 **listed at the top” of search results. The incident highlights**
7 **how demoting rivals can enrich Google in two ways: first,**
8 **through diverting greater traffic and business to its own**
9 **products; and second, through earning ad revenues from the**
10 **penalized sites that are subsequently scrambling to recover**
11 **their search placement.** When demoting firms that Google
12 views as actual or potential competitive threats, Google is
13 effectively raising rivals’ costs.⁴

14 34. The second way Google has unlawfully achieved, expanded,
15 maintained and continues to maintain its monopoly in the online video platform
16 market is to ensure that its YouTube app is preinstalled on as many new
17 smartphones as possible. This anticompetitive and exclusionary conduct has also
18 been recently reported:

19 Google's apps are front-and-center on newer Android phones
20 for a reason: Google wants you to use its services on Android,
21 and it has contracts in place to that end.

22 According to confidential contracts obtained by The
23 Information, phonemakers like Samsung and HTC need to
24 include a whole lot of Google-branded widgets and icons to be
25 allowed to include Google's Play Store. The requirements in the
26

27 ⁴ The House Report, pages 191-192 (emphasis added) (footnotes omitted).
28

1 contracts show that Google is demanding cushier placement for
2 its apps and services than it used to.

3 One requirement: Phones need to show a "Google" icon that
4 opens to a collection of 13 apps. Some are genuinely useful,
5 like YouTube, Google Maps, Google Drive, Gmail, and Google
6 Chrome.⁵

7 35. This unlawful anticompetitive and exclusionary conduct has also been
8 detailed in the DOJ Complaint; *see, e.g.*, paragraphs 133 to 135 (emphasis added):

9 133. **Google uses preinstallation agreements—MADAs—to**
10 **ensure that its entire suite of search-related products is given**
11 **premium placement on Android GMS devices. Consumers**
12 **naturally and regularly turn to these prominently placed search**
13 **access points to conduct searches.** Preinstallation agreements also
14 reinforce Google’s anti-forking requirements, either by including an
15 anti-forking clause of their own or, more commonly, requiring device
16 manufacturers to be signatories to an anti-forking agreement.

17 134. If a manufacturer wants even one of Google’s key apps
18 and APIs, the device must be preloaded with a bundle of other
19 Google apps selected by Google. The six “core” apps are Google
20 Play, Chrome, Google’s search app, Gmail, Maps, **and YouTube.**
21 Manufacturers must preinstall the core apps in a manner that prevents
22 the consumer from deleting them, regardless of whether the
23 consumer wants them. **These preinstallation agreements cover**
24

25
26 ⁵ Article entitled *Why Android Phones Now Come With So Many More Google*
27 *Apps* - (Kate Knibbs, published 9-26-2014) ([https://gizmodo.com/why-android-](https://gizmodo.com/why-android-phones-now-come-with-so-many-more-google-ap-1639529342)
28 [phones-now-come-with-so-many-more-google-ap-1639529342](https://gizmodo.com/why-android-phones-now-come-with-so-many-more-google-ap-1639529342)).

1 **almost all Android devices sold in the United States.**

2 135. Google's preinstallation agreements effectuate a tie, that
 3 is, they condition the distribution of Google Play and GPS to the
 4 distribution of these other apps. This tie reinforces Google's
 5 monopolies. The preinstallation agreements provide Android device
 6 manufacturers an all-or-nothing choice: if a manufacturer wants
 7 Google Play or GPS, then the manufacturer must also preinstall, and
 8 in some cases give premium placement to, an entire suite of Google
 9 apps, including Google's search products. **The forced**
 10 **preinstallation of Google's apps deters manufacturers from**
 11 **preinstalling those of competitors.** This forecloses distribution
 12 opportunities to rival general search engines, protecting Google's
 13 monopolies.

14 Additional detailed allegations of Google's exclusionary conduct are included
 15 below.

16 36. This conduct by Google also injures consumers as well as competition
 17 and its competitors such as Rumble. The affected consumers here include the
 18 people who search for and view videos on video sharing and viewing platforms
 19 such as YouTube and Rumble; and more specifically those who upload their own
 20 videos to these platforms. By uploading to Rumble's platform and exclusively
 21 licensing the video to Rumble, the content creators can receive a portion of the
 22 revenue that Rumble obtains by monetizing the content creator's video.

23 37. A video viewed on Rumble's platform generates much more revenue
 24 per CPM (1000 views) than if viewed on the YouTube platform. Because of its
 25 unlawfully achieved monopoly in the online video platform market, and its
 26 unlawful, exclusionary and anti-competitive acts that, among others, pushes links to
 27 Rumble Videos on the Rumble Platform to "below the fold" on a Google search
 28

1 results first page (or off the first page altogether), Google has been able to force
2 competitors, such as Rumble, to post their videos to YouTube in order to survive.
3 Google's monopoly and monopoly power, however, have allowed Google to pay to
4 Rumble (and hence to its content owners) a small portion of the ad revenue
5 generated on videos on YouTube (on average \$0.48 per CPM of Rumble Videos),
6 and to allow Google to retain the large majority of that revenue for itself.

7 38. In contrast, on average, Rumble receives \$20 or more per CPM of one
8 of its Rumble Videos if viewed on the Rumble platform. Therefore, if the Google
9 search page diverts traffic to the YouTube platform instead of Rumble's, Rumble
10 and the affected content creators receive much less revenue. This has also caused
11 and is causing direct injury to competition (many video platforms who were active
12 online before Google purchased YouTube no longer exist), to competitors (such as
13 Rumble), and to consumers, who upload their original content videos exclusively to
14 Rumble's platform in return for a portion of the ad revenue Rumble receives from
15 views of that video.

16 39. The loss on initial views is only a part of the damages caused to
17 Rumble and consumers. Rumble also has evidence that a percentage of users who
18 find Rumble through online searching for videos subsequently become uploaders of
19 their own videos exclusively to the Rumble platform, and thereafter both Rumble
20 and the content creator receive revenue. By rigging its search algorithms (and/or
21 through other means) to remove Rumble from the first page search results, by
22 forcing smart phone manufacturers to preinstall the YouTube app on the first
23 "page" of their phones (which app cannot be deleted or moved off the first page by
24 users), and thereby directing users away from Rumble, not only is Rumble deprived
25 of the added revenue, but the many diverted users who would have become
26 uploaders to Rumble's platform are deprived of a portion of that revenue as well.
27 This is also direct injury to the consumer.

28 40. Rumble (and in turn its content creators) have been tremendously

1 damaged and continue to be damaged by Google's willfully unlawful conduct.
2 Indeed, Rumble believes that at trial it will seek and obtain an award well in excess
3 of \$2,000,000,000 (Two Billion Dollars) before trebling, and that it will also
4 receive an award of its attorney fees and expenses.

5 **THE PARTIES, JURISDICTION, VENUE, AND COMMERCE**

6 41. Plaintiff Rumble is a Canadian corporation, with its principal place of
7 business at 218 Adelaide Street West, Suite 400, Toronto, Ontario, M5H1W7.

8 42. Google LLC is a limited liability company organized and existing
9 under the laws of the State of Delaware, and is headquartered in Mountain View,
10 California. The sole member of Google LLC is believed to be XXVI Holdings,
11 Inc., a Delaware corporation with its principal place of business in Mountain View,
12 California. Google wholly owns YouTube LLC, a limited liability company
13 organized and existing under the laws of the State of Delaware, and also
14 headquartered in Mountain View, California. Google LLC is wholly owned by
15 Alphabet Inc., a publicly traded company incorporated and existing under the laws
16 of the State of Delaware and headquartered in Mountain View, California.

17 43. Google engages in, and its activities substantially affect, interstate
18 trade and commerce. Google provides a range of products and services that are
19 marketed, distributed, and offered to consumers throughout the United States,
20 across state lines, and internationally. It is thus engaged in interstate commerce.

21 44. This Court has personal jurisdiction over Google LLC as it is
22 headquartered in this District.

23 45. Rumble brings this action pursuant to Sections 4 and 16 the Clayton
24 Act (15 U.S.C. §§ 4 and 16), to prevent and restrain Google's violations of Section 2
25 of the Sherman Act (15 U.S.C. § 2), and to obtain damages and other relief.

26 46. This Court has subject matter jurisdiction over Rumble's federal
27 antitrust claims pursuant to the Clayton Antitrust Act, 15 U.S.C. § 26, and 28

1 U.S.C. §§ 1331, 1337(a), and 1345, and pursuant to 28 U.S.C. § 1332.

2 47. Venue is proper in this District under Section 22 of the Clayton Act,
3 (15 U.S.C. § 22), and under 28 U.S.C. § 1391 because Google transacts business
4 and is found within this District.

5 48. Rumble does not have access to information concerning all of the
6 corporate relationships, responsibilities and decision-making processes within,
7 between and among Google, Alphabet and YouTube, but is informed and believed
8 that from time to time there have been corporate realignments among and between
9 them. Rumble therefore reserves the right to add defendants or to substitute the
10 current correct name of a defendant as that information is obtained through
11 discovery.

12 YOUTUBE

13 49. YouTube was conceived of by three former PayPal employees.

14 50. The website www.youtube.com became active on February 14, 2005.
15 It was not, however, the only online video platform at that time. Vimeo, for
16 example (www.vimeo.com), was active then (having launched in November 2004),
17 and many more became active soon thereafter. It has been estimated that soon there
18 were hundreds if not thousands of active online video platforms such as
19 zippyvideos.com, break.com, dailymotion.com, Google Video, and metacafe.com,
20 to name a few. All of that was about to change, however, and that change began
21 with Google's acquisition of YouTube in November, 2006.

22 GOOGLE'S GAME-CHANGING ACQUISITION OF YOUTUBE

23 51. Google saw the rapidly rising popularity of online video platforms, and
24 quickly realized that there could be a synergistic relationship between Google's
25 search engine dominance and the growing potential for a linked video platform.

26 52. Google paid a whopping \$1.65 Billion for YouTube, even though
27 YouTube had been active for less than two years and had yet to come close to
28

1 turning a profit.⁶

2 53. Google, in its pursuit of global internet dominance and the vast riches
3 that would produce, realized that people would use its search engine to search for
4 online videos. Google also knew that online searchers pay most attention and most
5 often click on the first or second listing/link on a Google search result page, so it
6 would be important that any Google search result for online videos list and link to
7 YouTube at the very top of the search results page, and push competitive platforms
8 to the bottom of the page (“below the fold”) or even onto the rarely-visited second
9 page. Google also realized that by making the YouTube app the default video
10 platform app on the first “page” of its smartphone, and requiring other smartphone
11 manufacturers to do the same, it could literally corner the market through its
12 unlawful conduct.

13 54. And Google has realized a monopolist’s profits for its YouTube
14 subsidiary. Indeed, YouTube LLC reported \$15.1 Billion in revenue for 2019, of
15 which \$4.7 Billion was earned in the 4th quarter of 2019.⁷ It has been reported that
16 YouTube’s revenue for 3rd quarter of 2020 was \$5.0 Billion (notwithstanding the
17 adverse impact on advertising spends due to the pandemic).⁸

18 ///

20 ⁶ As reported by, among others, NBC News, Oct. 9, 2006, 8:54 AM PDT, Source:
21 The Associated Press (<https://www.nbcnews.com/id/wbna15196982>).
22

23 ⁷ Article entitled *YouTube Reveals Revenue for First Time: \$15.1 B in 2019* (Alex
24 Weprin, posted 2/3/2020) ([https://www.hollywoodreporter.com/news/youtube-](https://www.hollywoodreporter.com/news/youtube-revenue-revealed-video-site-did-151b-2019-ad-revenue-1276004)
25 [revenue-revealed-video-site-did-151b-2019-ad-revenue-1276004](https://www.hollywoodreporter.com/news/youtube-revenue-revealed-video-site-did-151b-2019-ad-revenue-1276004)).
26

27 ⁸ [https://www.theverge.com/2020/10/29/21531711/google-alphabet-ad-revenue-](https://www.theverge.com/2020/10/29/21531711/google-alphabet-ad-revenue-youtube-waymo-cloud-search)
28 [youtube-waymo-cloud-search](https://www.theverge.com/2020/10/29/21531711/google-alphabet-ad-revenue-youtube-waymo-cloud-search)

THE RELEVANT MARKETS

55. The market for online video platforms that are accessible in the United States and globally – the online video platform market – is a relevant antitrust market. Online video platforms allow content creators and other consumers to upload, view, share and download video content.

56. Such platforms are unique in that there is no other viable way for video creators to host, share, create channels, monetize, and distribute their content across the Internet from a single centralized video platform. Consumers use these platforms for all of these purposes in addition to simple enjoyment.

57. The fact that Google paid \$1.65 Billion for YouTube within two years after its launch (and before it had turned a profit) attests to the unique service provided by these platforms in this relevant market.

58. Other sources of this video content are not reasonable substitutes. Offline and other online resources, such as books, publisher websites, social media platforms, and other internet service providers, such as Amazon Prime Video, Netflix, or Hulu, do not and cannot offer users and content creators the same service or convenience. Although Netflix, Hulu and Amazon Prime Video contain video content, they are not video platforms where users share videos or where users can upload and monetize their videos. They are not a reasonable or acceptable substitute. Apps like TikTok, Instagram and Facebook do not provide the same type of video sharing and viewing services, do not share revenue with the content creators (Facebook's offer to share revenue is extremely limited, and is available only to a very small percentage of content creators, and not at all to the vast majority of content creators who upload to Rumble's platform). They also do not have nearly the same consumption size as YouTube, which is evidenced by bandwidth consumption. It has also recently been reported that in 2018 Google and Facebook entered into an agreement referred to as "Jedi Blue" which, as reported,

1 restricts Facebook's ability to compete with Google. Thus, there are no reasonable
2 substitutes for online video platforms such as Rumble and YouTube.

3 59. The United States is a separate relevant geographic market for online
4 video platforms. Google offers users in the United States and globally a locally-
5 hosted domain website to search for and with a click on the search results link, to
6 view online video content. Therefore, the United States is a separate relevant
7 antitrust geographic market.

8 60. There are significant barriers to entry in the online video platform
9 business. The creation, maintenance, and growth of such a platform requires a
10 significant capital investment, highly complex technology, access to effective
11 distribution, and, of vital importance, adequate scale, traffic, brand awareness,
12 monetization and visibility.

13 61. Thus, the market for consumers in the United States and globally for
14 online video platforms are the relevant markets for antitrust purposes and for
15 purposes of this lawsuit. This is confirmed by the fact that third parties routinely
16 refer to online video platforms for the purposes of measuring and reporting size of
17 and market share in that market. *See, e.g.:*

18 [https://markets.businessinsider.com/news/stocks/online-video-](https://markets.businessinsider.com/news/stocks/online-video-platforms-market-size-worth-18-7-billion-by-2027-grand-view-research-inc-1029703313)
19 [platforms-market-size-worth-18-7-billion-by-2027-grand-view-](https://markets.businessinsider.com/news/stocks/online-video-platforms-market-size-worth-18-7-billion-by-2027-grand-view-research-inc-1029703313)
20 [research-inc-1029703313](https://markets.businessinsider.com/news/stocks/online-video-platforms-market-size-worth-18-7-billion-by-2027-grand-view-research-inc-1029703313)

21 <https://www.alliedmarketresearch.com/online-video-platform-market>

22 [https://www.globenewswire.com/news-release/2020/09/23/](https://www.globenewswire.com/news-release/2020/09/23/2097738/0/en/Online-Video-Platform-Market-to-hit-USD-3-Bn-by-2026-Global-Market-Insights-Inc.html)
23 [2097738/0/en/Online-Video-Platform-Market-to-hit-USD-3-Bn-by-](https://www.globenewswire.com/news-release/2020/09/23/2097738/0/en/Online-Video-Platform-Market-to-hit-USD-3-Bn-by-2026-Global-Market-Insights-Inc.html)
24 [2026-Global-Market-Insights-Inc.html](https://www.globenewswire.com/news-release/2020/09/23/2097738/0/en/Online-Video-Platform-Market-to-hit-USD-3-Bn-by-2026-Global-Market-Insights-Inc.html)

25 [https://www.valuemarketresearch.com/report/online-video-platform-](https://www.valuemarketresearch.com/report/online-video-platform-market)
26 [market](https://www.valuemarketresearch.com/report/online-video-platform-market)

27 62. Scale is also a significant barrier to entry in the relevant market. Scale
28

1 affects a video platform's ability to attract subscribers, content creators and
2 advertising and licensing revenue. The scale needed to successfully compete today
3 is greater than ever. Google's anticompetitive and exclusionary conduct effectively
4 eliminates rivals' ability to build the scale necessary to compete successfully. This
5 is evident from the fact that there were hundreds if not thousands of video platforms
6 before Google's purchase of YouTube and its anticompetitive and exclusionary
7 conduct began to bear fruit, and approximately ten or less today of any significance.

8 63. It has been reported that Google has achieved dominance globally in
9 several online markets. As the *Wall Street Journal* reported on April 27, 2021, the
10 Google search engine has a lock on 92% of world-wide traffic, Google Maps has an
11 89% share of online navigation, and Google's YouTube controls 73% of global
12 online video activity (a term that the WSJ article does not define). On information
13 and belief, YouTube's share of the online video platform market in the United
14 States is now greater than 75% and, as a result of Google's exclusionary practices,
15 is growing at the expense of what would otherwise be natural competitive forces.

16 64. This dominance and monopoly power have been acquired by Google's
17 unlawful conduct as described herein, and that same conduct is being used to
18 maintain that monopoly share, and to reap a monopolist's profits by harming,
19 competition, competitors and consumers.

20 **IMPORTANCE OF SCALE FOR ONLINE VIDEO PLATFORMS**

21 65. Just as scale is of critical importance to competition among general
22 search engines for consumers and search advertisers, scale is equally important to
23 online video platforms. Google has long recognized that without adequate scale its
24 rivals cannot compete with its online business, and applied that same logic, game
25 plan and goal with respect to its YouTube business.

26 66. Greater scale expands the audience reach of an online video platform,
27 and generates more users who register with the platform, which in turn generates
28

1 more uploaded videos, which in turn generates more views, which in turn generates
2 greater revenue and profits.

3 67. Google's unlawful, anticompetitive and exclusionary conduct as
4 described in this First Amended Complaint has greatly enlarged and continues to
5 enlarge YouTube's scale and greatly diminished and continues to diminish
6 Rumble's scale, which has had an ongoing and increasing adverse effect on
7 competition and on Rumble's revenue (and in turn, that of its content creators).

8 **GRAPHIC EVIDENCE OF HOW GOOGLE**
9 **UNFAIRLY STACKS THE DECK IN YOUTUBE'S FAVOR**

10 68. Paragraphs 2 to 13 above are incorporated herein by reference.

11 69. In addition to what is shown in those paragraphs, shown below in
12 Figure 3 are the Google Search results for the search term "funny dogs," in which,
13 as will be noted, every single one of the listings is a YouTube listing (all nine of the
14 listings/links are to YouTube, including one that is **four years old**), even though
15 Rumble has a tremendous number of "funny dog" videos available on its platform.
16 Clearly, Google is giving preference to its own YouTube videos over those of
17 Rumble (and other platforms), and making sure that Rumble is listed "below the
18 fold" (actually, here, not at all) to ensure that the YouTube versions of the video

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

are selected by the vast majority (if not all) of the people looking for “funny dogs” videos.

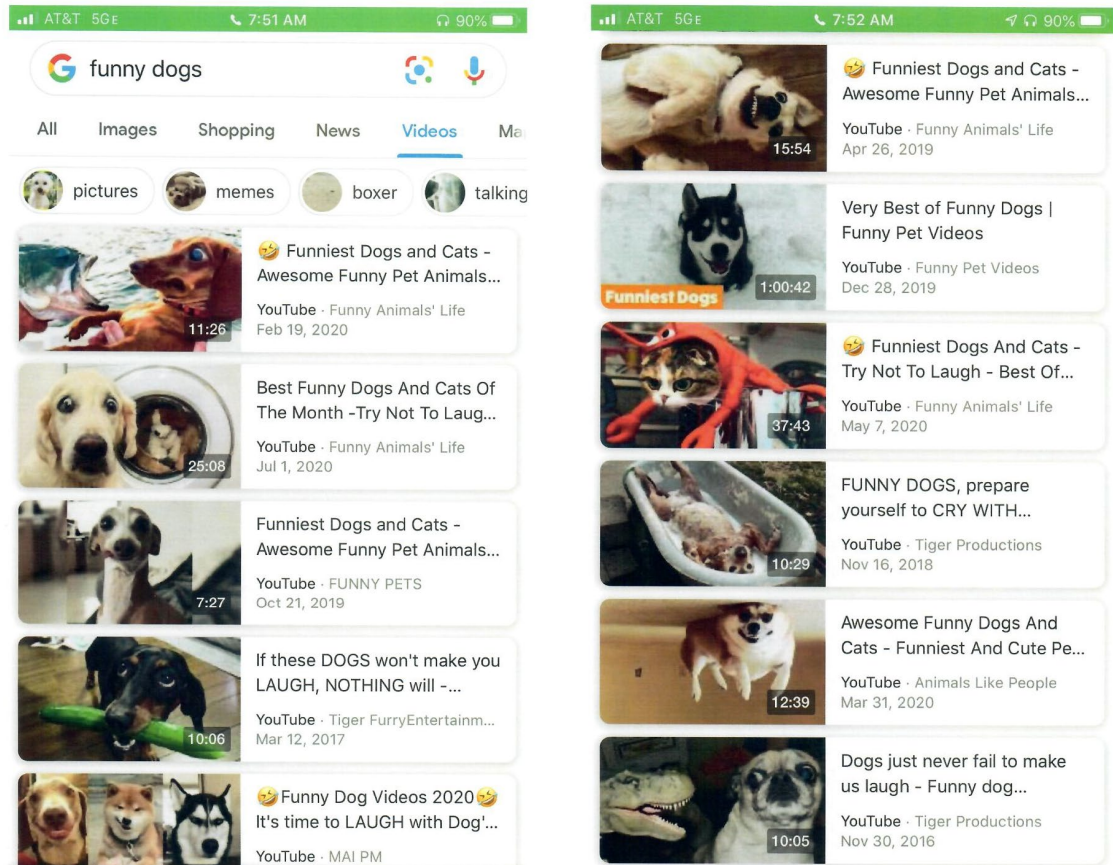


Figure 3

70. As shown in Figure 4 below, even when the Google search term entered was “funny dogs on rumble,” the Google search results were still all

///

///

///

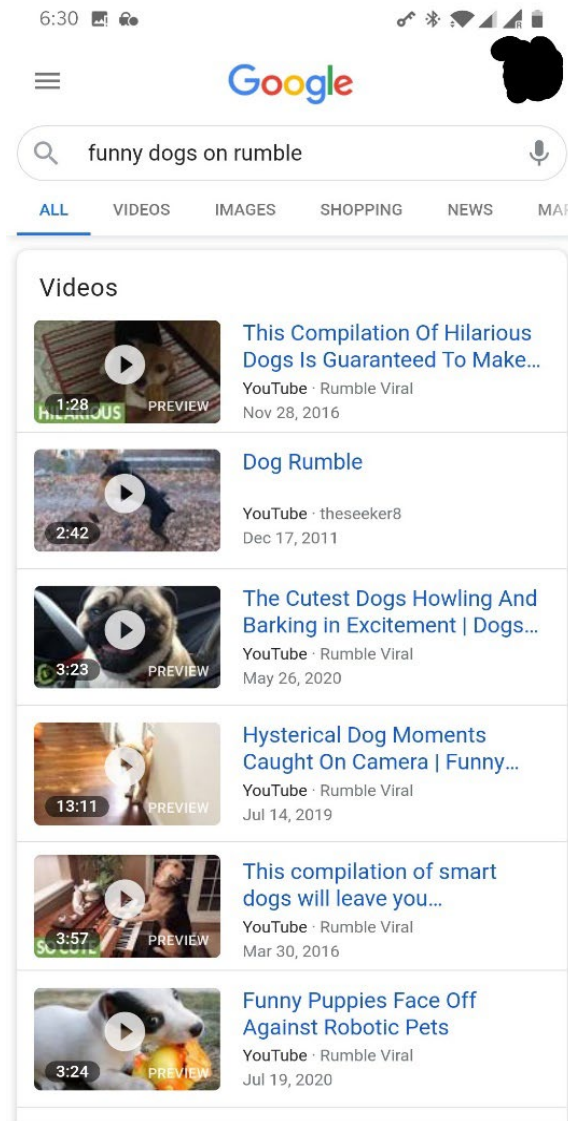
///

///

///

///

1 YouTube videos in the all-important “above the fold” top portion of the Google
 2 search results page:⁹



21 Figure 4

22
 23 ⁹ It is well known and an accepted fact in the industry that online searchers will pay
 24 most attention to the first- or second-listed search results (the portion “above the
 25 fold,” to use the newspaper term) and will rarely click on links that are “below the
 26 fold.” This was also confirmed in the House Report at page 188: “However,
 27 Google continues to give its service top placement, occupying close to 100% of the
 28 above-the-fold mobile search results page and around 25% of desktops.”

71. There is, and can be, no valid business purpose, and no benefit to online searchers for Google to rig its search algorithms (and/or to otherwise manipulate its search results via other means or mechanisms) to avoid listing on its search results page a link to the Rumble platform, and instead listing only YouTube links. For example, if a video-searcher is searching for “funny dogs on rumble” (emphasis added), listing links that are actually “funny dog” videos on the Rumble platform would be most beneficial to that searcher and most consistent with the search. But, as shown, Google does not do that, and instead lists only links to its YouTube platform. The clear business purpose here is not only invalid, it is unlawful – to divert as much traffic as possible to YouTube so that it maintains its monopoly in the relevant market, and to secure for YouTube (and thus for Google) the vast majority of the advertising revenue from views of that video. Google set out to obtain, and has unlawfully obtained, a monopolist’s profits, and has done so at the expense of Rumble (its content creators and other online video platforms).

72. Rumble has conducted tests specifically to determine if the Google algorithms for video searches (or Google’s other result-determining means and mechanisms) in fact self-preference YouTube, even when Rumble is the exclusive holder and originator of the Rumble Video, as described below:

a. When Rumble is the original source of a Rumble Video and is also the first reported source, once that video is “live” on the Rumble platform, Rumble can decide and control when and to whom to syndicate that video, and in what order.

b. Rumble also inserts its own metadata into the video that identifies it as a Rumble Video for which Rumble is the originating source.

c. Once the Rumble Video is “live” on the Rumble platform with the Rumble-inserted metadata, Rumble alerts Google’s search engine as to the existence of the video, that it is an original-content Rumble Video, and that it is available to be viewed on the Rumble.com website.

1 d. At that point, Rumble syndicates that Rumble Video to its
2 syndication partners.

3 e. Suspecting, as a result of the WSJ Article, that Google's search
4 algorithms for online videos give unfair preference to YouTube, Rumble has
5 conducted several tests where for some tests, it syndicates the video to its
6 partners simultaneously, and for other tests, it has syndicated the Rumble
7 Video at different times, with YouTube receiving it last.

8 f. What Rumble discovered was that when the Rumble Video was
9 simultaneously syndicated to all partners, YouTube was preferenced by
10 Google's search engine such that YouTube was the first result, usually
11 followed by MSN, Yahoo, and then Rumble. This occurred despite the fact
12 that Google management and Google itself has gone on record emphasizing
13 that original sourced reporting and content will always receive preferential
14 treatment by its search engine algorithms.¹⁰ Once again, Google's statements
15 are belied by its action. This preferential treatment for YouTube occurred
16 despite all online locations referencing Rumble as the source for the video,
17 linking back to Rumble's official content URL, and in some instances (such
18 as the MSN listing), actually providing a canonical URL back to Rumble.
19 This proves that Google's listing first of the YouTube version of the video
20 was intentional, and not some inadvertent mistake.

21 g. In order to further rule out the possibility that YouTube
22 somehow believed it received the URL for the Rumble Video first before
23 anyone else and that was why the Google search engine listed the YouTube
24 first due to its integration with YouTube, for other tests, Rumble made sure

25
26 ¹⁰ See, Article entitled *Elevating original reporting in Search*, by Richard Gingras,
27 Google VP News, published September 12, 2019, on "Google The Keyword" -
28 <https://www.blog.google/products/search/original-reporting/>.

1 that the URL for the video was first released to MSN and Yahoo, and only
2 released to YouTube several hours after the video was released to MSN and
3 Yahoo.

4 h. Even in this timed release situation, YouTube was again listed
5 first by the Google search engine, followed by MSN, then Yahoo, and only
6 then is Rumble listed – usually below the fold. There is no way, other than
7 through Google’s manipulation of the search results to favor YouTube, for
8 Rumble, as the original source of the content and owner of the exclusive
9 rights to the video, not to be listed first, and YouTube not listed last. No
10 matter how hard Rumble tried to release the videos in these tests in a way to
11 ensure that YouTube would not be listed above Rumble and the other video
12 platforms who received the video before YouTube, YouTube was always
13 listed first.

14 i. Figure 5 below shows such a result in which Rumble is the
15 original source of the released Video, and Rumble released it first to MSN
16 and Yahoo, and then later to YouTube. According to Google’s own
17 duplicate content and original sourced reporting best practices which it
18 purports to follow, the Rumble video should have been listed first. But as
19 shown below in Figure 5, YouTube is listed first, even though all of the other
20 sites received the video before YouTube, and all of the sites, including

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 sites received the video before YouTube, and all of the sites, including
 2 YouTube, acknowledge Rumble as the original source of the video:

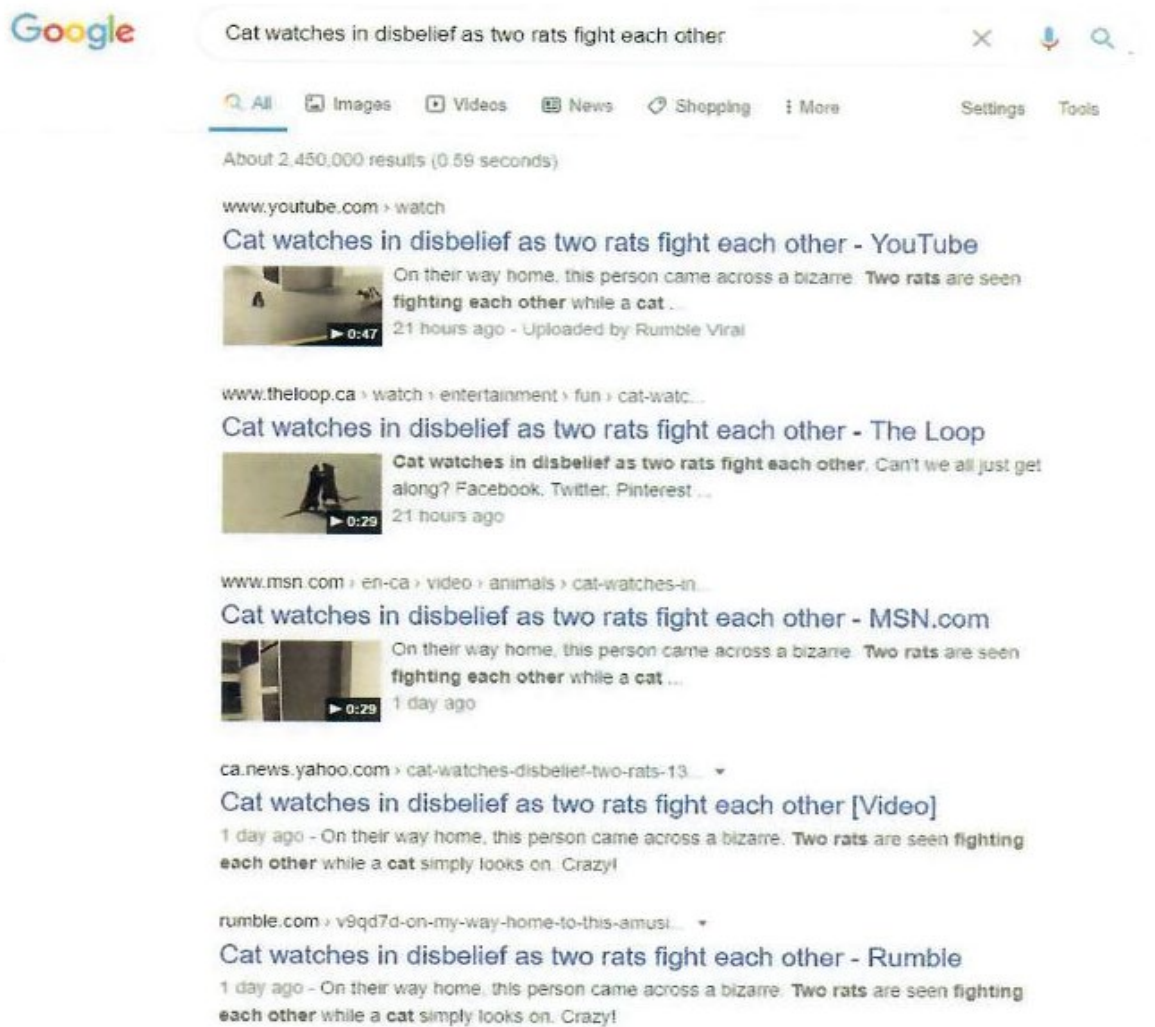


Figure 5

73. As the House Report and the DOJ Complaint explain in detail, this unfair, unlawful anticompetitive and exclusionary behavior by Google greatly benefits Google/YouTube, and greatly damages and continues to damage Rumble, competition (e.g., other online video platforms), as well as consumers (e.g., those who upload or might want to upload their videos exclusively to Rumble's platform).

74. The search examples set forth above illustrate how Google's rigged

1 search algorithms (and/or other means or mechanisms) favor the YouTube platform
 2 over Rumble involving specific videos and specific searches that relate to those
 3 videos, even to the point when a search is looking specifically for videos “on
 4 rumble.” Google also advantages YouTube over Rumble or other competitors as a
 5 consistent and conscious practice, no matter the video or the search term(s). And
 6 this is true even if a Rumble video is not uploaded to YouTube. Rumble and
 7 consumers (*e.g.*, content creators) are disadvantaged, and competition is harmed, in
 8 the defined market because Google provides self-preferencing search advantages to
 9 its wholly-owned YouTube platform as a part of its scheme to maintain its
 10 monopoly power, and to reap a monopolist’s financial rewards.

11 **HOW GOOGLE USES ITS EXCLUSIONARY AND ANTI-COMPETITIVE**
 12 **AGREEMENTS WITH ANDROID-BASED MOBILE SMART DEVICE**
 13 **MANUFACTURERS AND DISTRIBUTORS TO ENSURE THAT THE**
 14 **YOUTUBE APP AND PLATFORM ARE DOMINANT**
 15 **AND ABLE TO BE SELF-PREFERENCED**

16 75. As online searching (including searches for video content) has
 17 gravitated more and more from laptop and desktop computers to mobile smart
 18 devices (such as smart phones), it became important for Google to ensure that its
 19 ability to self-preference its YouTube video platform unfairly would not be
 20 adversely affected.

21 76. One way to do so was to have Google’s YouTube app pre-installed on
 22 as many mobile smart devices as possible to the exclusion of other video platform
 23 apps, such as Rumble’s, and to have the YouTube app preinstalled on the first “page”
 24 (*i.e.*, the default home or opening screen) of that smart device. Google knew that
 25 users would be much more likely to use a preinstalled YouTube app on the first
 26 page of the device to search for videos rather than go to the trouble of downloading
 27 a competing platform’s app, such as Rumble’s. Google’s acquisition of the
 28

1 Android operating system provided it with the means to do so.

2 77. Although portions of the Android operating system are “open source,”
3 using only the open source portions without also entering into related agreements
4 with Google is not a commercial reasonable or viable alternative for mobile smart
5 device manufacturers, as is evidenced by the fact that all Android-based mobile
6 smart phone manufacturers are believed not to have used the “open source” option
7 without doing business with Google, and have instead entered into the anti-
8 competitive, exclusionary, tying and other agreements demanded by Google.

9 78. In order to understand how this was and is being done, understanding
10 Google’s several agreements with manufacturers and carriers provides important
11 context and background.

12 79. General search services providers such as Google typically enter into
13 licensing and distribution agreements with manufacturers and carriers that
14 manufacture and distribute mobile smart devices with search access points.

15 80. In the United States, roughly 60% of all search queries are covered by
16 Google’s exclusionary agreements. On mobile smart devices, Google’s
17 exclusionary agreements cover more than 80% of all U.S. search queries.

18 81. Of the remaining search queries not covered by Google’s exclusionary
19 agreements, almost half take place on search access points owned by Google.
20 Google is a vertically integrated search provider and distributes search in part
21 through several of its own properties, including for example its browser (Chrome)
22 and phone (Pixel).

23 82. Between its exclusionary contracts and owned-and-operated
24 properties, Google effectively owns or controls search distribution channels
25 accounting for roughly 80% or more of the general search queries in the United
26 States.

27 83. Google’s agreements come in three basic types, with the specific terms
28 of each agreement depending upon the other contracting party and the search access

1 points at issue.

2 84. First, Google requires Android device manufacturers that want to
3 preinstall certain of Google's proprietary apps to sign an anti-forking agreement.
4 More detail as this type agreement will be provided below, but in general an anti-
5 forking agreement sets strict limits on the manufacturers' ability to make and sell
6 Android-based devices that do not comply with Google's technical and design
7 standards.

8 85. Second, for Android device manufacturers that sign an anti-forking
9 agreement, Google provides access to its vital proprietary apps and application
10 program interfaces (APIs) for preinstallation, but only if the manufacturers
11 contractually agree: (1) to take (that is, pre-install) a bundle of other Google apps
12 (such as its YouTube app); (2) to make certain apps undeletable (including its
13 YouTube app); and (3) to give Google the most valuable and important location on
14 the device's default home screen (including for its YouTube app).

15 86. Third, Google provides a share of its search advertising revenue to
16 Android device manufacturers, mobile phone carriers, competing browsers, and
17 Apple; in exchange, Google becomes the preset default general search engine for
18 the most important search access points on a computer or mobile device. And, by
19 becoming the default general search engine, Google is able to continue its
20 manipulation of video search results using its search engine to self-preference its
21 YouTube platform, making sure that links to videos on the YouTube platform are
22 listed above the fold on the search results page.

23 87. As a practical matter, mobile smart device users rarely switch the
24 preset default general search engine or preinstalled apps (such as the YouTube app),
25 and, as Google has ensured, users cannot delete the preinstalled YouTube app even
26 if they wanted to do so. In many cases, the agreements relating to mobile smart
27 devices go even farther: (1) expressly prohibiting the preinstallation of any rival
28 general search services and apps (which would include the Rumble app); and

(2) expressly prohibiting the setting of other defaults to rival general search engines. This means that Google is the only preset default search provider and YouTube the only online video platform preinstalled on the device

88. It has also been reported on April 26, 2021 that Google is threatening Roku with the removal of YouTube TV from Roku’s platform to force Roku to grant preferential access to its consumer data moving forward; including that Google has asked Roku to do things that it does not see replicated on other streaming competitors’ platforms, like creating a dedicated search results row for YouTube within the Roku smart TV interface and giving YouTube search results more prominent placement.¹¹

89. These agreements work exactly as Google designed and intended them to work — to foreclose distribution to and use of Google’s rivals for search and online video platform services, weakening them as competitive alternatives for consumers and advertisers by denying them the all-important scale required to grow and prosper.

BACKGROUND ON GOOGLE’S MOBILE SMART DEVICE STRATEGY AND DOMINANCE OF THE ANDROID ECOSYSTEM

90. Understanding Google’s overall business strategy and how Google’s anticompetitive agreements fit into and promote that strategy is helpful to place Google’s anticompetitive and exclusionary conduct with respect to online video platforms into context and clearer focus. It was and is a classic “carrot and stick” approach that has worked to perfection.

91. When Google was formed and achieved initial success in the late

¹¹ https://www.axios.com/roku-google-youtube-tv-dispute-525316c1-4d66-44e3-a96a-40db7b10e05b.html?utm_source=twitter&utm_medium=social&utm_campaign=editorial&utm_content=technology-google

1 1990s and early 2000s, internet searches were almost exclusively performed
2 through browsers on desktop computers. But as Google told investors in its 2007
3 Form 10-K: “More individuals are using non-desktop devices to access the internet.
4 If users of these devices do not widely adopt versions of our web search
5 technology, products or operating systems developed for these devices, our
6 business could be adversely affected.”

7 92. In this increasingly mobile world, Google was concerned about and
8 had to contend with serious competitive threats from mobile device manufacturers
9 (such as LG, Motorola, and Samsung), and wireless carriers (such as AT&T, T-
10 Mobile/Sprint, and Verizon) that would increasingly hold sway over distribution of
11 search and search ads (including those associated with online video platforms), and
12 thus divert from Google the revenue generated thereby. In order to maintain
13 dominance and monopoly power and profits in this increasingly mobile market
14 place, Google thus faced the task of “How can we conquer the world’s major
15 wireless markets simultaneously?”

16 93. The solution pursued by Google started with its acquisition of
17 Android, a mobile operating system that Google purchased in 2005. This
18 acquisition was key not only for Google to maintain its monopoly in search but also
19 in online video platforms. In 2007, Google publicly released the Android code
20 under an open-source license. Being “open source” means that anyone can access
21 the source code and use it as is, or use it as the building block on which to make
22 their own, modified operating system. Such an add-on is known in the industry a
23 “fork.” The “open-source” nature of the Android system was key to the widespread
24 adoption and use of Android such that it became the dominant system.

25 94. At first, Google’s apparent lack of control over an open-source
26 operating system was attractive to otherwise skeptical smart device manufacturers
27 and carriers of mobile phones, who, notwithstanding their skepticism, chose to use
28 the “open source” Android system instead of the other choices then available.

1 Being “open-source” initially appeared to mean that it was and would remain free
2 for all to use, without being controlled by Google. As the Android team leader
3 observed to Google’s board of directors at the time, “Google was historically seen
4 as a threat” to these distributors. But an open-source model suggested that they [the
5 distributors]—and not Google—would ultimately retain control over their devices
6 and the app ecosystem on those devices. Just how wrong they were would become
7 apparent only later.

8 95. Just as Google clearly knew would happen by its making Android
9 open source, once enough major manufacturers and distributors agreed to use
10 Android believing it was and would remain a no-strings-attached-free-to-use
11 operating system, the use of the Android operating system became more and more
12 widespread as the Android operating system attracted developers looking for wide
13 distribution, adoption and use of their own apps. So these developers adapted their
14 apps for use with the Android operating system. As more app developers focused
15 their efforts on designing Android apps, Android-based apps in turn became more
16 attractive to consumers, which in turn caused even more app developers to design
17 for Android. The result was the creation of a must-have ecosystem of Android apps.

18 96. Next, to ensure that the Android ecosystem achieved critical mass and
19 to advance the network effects to its monopolist’s goal, Google offered to “share”
20 its search advertising and app store revenues with distributors as a further
21 inducement for them to give up the desired “control” that had attracted them to use
22 the Android system in the first place. As one senior executive explained about
23 Android Market (an earlier name for Google’s app store), “Android Market is a
24 bitter pill for carriers, and a generous revenue share is the sugar that makes it go
25 down smoother.” In a nutshell, beginning over ten years ago, Google used its
26 “open source” gambit and revenue sharing to attract “partners” to Android and to
27 maintain control over those “partners,” and as discussed below, Google continues to
28 use revenue sharing as part of its playbook to keep them locked in today.

1 97. By 2010, the Android team leader noted that “Android is poised for
2 world domination—the success story of the decade.” He was right; Google’s
3 strategy to first lure manufacturers and distributors into using the Android operating
4 system by making it appear to be free and beyond Google’s control only to lock
5 them into having to do business with Google down the road on Google’s terms,
6 worked and worked well.

7 98. As a result of the foregoing, the “Google Play” app store (FKA the
8 Android Market) attracted and obtained a massive library of Android-based apps,
9 making it essential for manufacturers of Android-based mobile smart devices to
10 have on their devices.

11 99. As for the Android operating system itself, it quickly became the
12 dominant licensable mobile operating system in the United States. In the four years
13 between 2009 and 2012, Android’s share of licensable mobile operating systems on
14 smartphones in the United States more than tripled, reaching about 80%. Today,
15 Android represents over 95% of licensable mobile operating systems for
16 smartphones and tablets in the United States and accounts for over 70% of all
17 mobile device usage worldwide. The only other mobile operating system with
18 significant market share in the United States is Apple’s iOS, which is not fully open
19 source and is not licensable. Therefore, there is no viable alternative.

20 100. Control over Android has always been a critical issue and of critical
21 importance to Google. As Google’s Android team leader asked at the time: “How
22 do we retain control of something we gave away?” Google’s answer is the set of
23 contractual “carrots” and “sticks” discussed above and in more detail below that
24 empower Google to “[o]wn the ecosystem” and help thwart the development and
25 adoption of any alternative mobile ecosystem that could support a different search
26 provider (who undoubtedly would not self-preference YouTube and the YouTube

27 ///

28 ///

app as Google has done and continues to do), which are shown in this Figure 6:

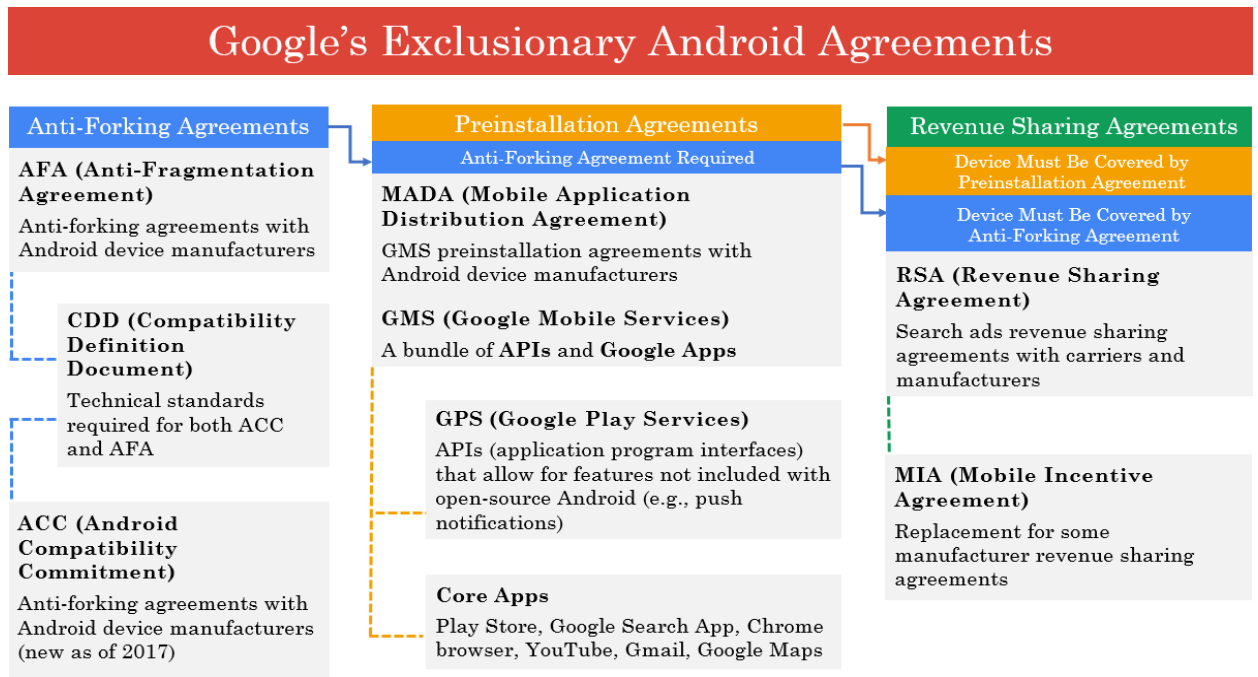


Figure 6

101. By unlawfully maintaining its monopoly power in search, including in the mobile world, Google was able to and did unlawfully retain its ability to unfairly preference and promote its YouTube video platform and app, and thereby to harm competition in the online video platform market, hobble competitors in the online video platform market (such as Rumble) and harm consumers of online video platforms (such as the content creators who have exclusively licensed their videos to Rumble for monetization).

GOOGLE'S ANTI-FRAGMENTATION AGREEMENTS AND COMPATIBILITY COMMITMENTS FOR ANDROID MOBILE DEVICES

102. Any suggestion that the available open-source version of the Android operating system is a viable alternative for mobile smart device manufacturers and distributors, devoid of the need for any involvement, interaction or agreements with Google, is specious.

1 103. While the Google-owned Android operating system is open source
2 (including Google’s periodic updates to the code), Google takes a number of very
3 effective anti-competitive steps to minimize the risk that a developer will create an
4 Android fork to compete with the Android ecosystem controlled by Google, or that
5 a manufacturer or distributor would be willing to use any such forked system. By
6 limiting the existence of devices running Android forks, Google limits possible
7 distribution channels available to its search rivals, and in turn preserves its ability
8 unlawfully to self-preference its YouTube platform and YouTube app.

9 104. As mentioned and shown above in Figure 6, one way Google retains
10 control of the Android ecosystem is through anti-forking agreements. These
11 agreements broadly prohibit manufacturers from taking “any actions that may cause
12 or result in the fragmentation of Android.” Notably, “fragmentation” is left
13 undefined, giving Google wide latitude in practice to assert the anti-fragmentation
14 provision against a wide (and undefined) array of modifications, and puts those
15 who have signed these agreements at risk of inadvertently running afoul of the
16 provision.

17 105. In addition, Google’s anti-forking/fragmentation agreements
18 specifically forbid manufacturers from developing or distributing versions of
19 Android that do not comply with Google-controlled technical standards, as defined
20 in its Android Compatibility Definition Document (Android CDD).

21 106. Two types of anti-forking agreements exist. Before 2017, Google
22 required distributors to sign Anti-Fragmentation Agreements (AFAs). In 2017,
23 while (and undoubtedly as a result of) being investigated by the European
24 Commission for anti-competitive behavior (and long after Google had locked up its
25 monopoly status), Google began shifting its anti-forking restrictions from AFAs to
26 new Android Compatibility Commitments (ACCs). As of today, Google has an
27 AFA or ACC with the leading Android device manufacturers, including LG,
28 Motorola, and Samsung.

1 107. ACCs are marginally less onerous than AFAs because they allow
 2 manufacturers to build devices or components for third parties to sell to consumers,
 3 even if those devices or components do not comply with Google’s technical
 4 standards. But ACCs, like AFAs, prohibit signatories from manufacturing Android
 5 forks of their own, distributing devices with Android forks, or using their powerful
 6 brands to market forks on behalf of third parties. Most well-known Android-based
 7 manufacturers of mobile smart devices are bound by AFAs or ACCs.

8 108. The AFAs and ACCs do not just restrict manufacturers’ ability to build
 9 and distribute innovative versions of mobile phones. Over time, Google has
 10 extended the Android CDD such that its specifications apply to tablets and
 11 emerging technologies such as smart TVs, watches, and automotive devices.
 12 Manufacturers that hope to release Android-based versions of these products must
 13 comply with Google’s standards as well. The beat goes on.

14 **GOOGLE’S MOBILE APPLICATION**
 15 **DISTRIBUTION AGREEMENTS (MADAS)**
 16 **FOR ANDROID MOBILE DEVICES**

17 109. Notwithstanding the “free” façade as to the open source Android
 18 system, mobile smart device manufacturers in actuality have no viable choice but to
 19 agree to AFA’s with Google in part because such agreements are a precondition to
 20 receiving a license to distribute devices with must-have proprietary Google apps
 21 and APIs (the set of technical specifications that enable software applications to
 22 communicate with each other, operating systems, and hardware). These are gotta-
 23 have items, without which no manufacturer’s product could effectively compete in
 24 the marketplace. This Google app & API license is provided only through the
 25 preinstallation agreements mentioned above, which are called Mobile Application
 26 Distribution Agreements, or MADAs. Leading Android device manufacturers, such
 27 as LG, Motorola, and Samsung, are all MADA licensees.
 28

1 110. Over time, Google has included important features and functionality in
2 its own ecosystem of proprietary apps and APIs (which are not made open-source
3 by Google), rather than include them in the open-source Android code (thereby
4 effectively eliminating reliance solely on the open-source code as a viable option).
5 Google refers to this proprietary layer of app and API's as "Google Mobile
6 Services" (GMS). GMS includes many of Google's apps, such as Google's search
7 app, Chrome, YouTube, and Google Maps.

8 111. Perhaps most importantly in terms of how Google is able to effectively
9 control and dictate to manufacturers who are ostensibly using the open-source
10 Android system, GMS also includes Google Play, the Google's app store that was
11 once known as the Android Market. An app store such as Google Play is one of the
12 most valuable features on a mobile device because it offers access to a huge
13 selection of compatible apps. Google Play offers about three million apps, more
14 than any other app store (including Apple's App Store, which is compatible only
15 with Apple devices). More than 90% of the apps on Android devices are
16 downloaded through Google Play. For years, Google Play has been the only
17 commercially significant app store option for Android manufacturers. Getting
18 access to Google Play is key to the Android manufacturers, and Google of course
19 solely controls that access.

20 112. Another key part of GMS is the set of APIs that allow developers to
21 access certain important features. The APIs available within GMS are part of
22 "Google Play Services" (GPS). GPS allows apps, including third-party apps, to
23 perform functions that are not possible using just the open-source version of
24 Android. For example, using the open-source Android system, third-party apps
25 cannot provide basic "push notifications," enable in-app purchases through Google
26 Play, or use data from Google Maps. To have these functionalities, third-party apps
27 must use GPS, and without those functionalities, the app in reality has little to no
28 chance of being successful in the marketplace.

1 113. The integration of key functions with GPS makes it more difficult, if
2 not effectively and competitively impossible, for third-party Android developers to
3 port their apps to Android forks because the apps are designed to interact with
4 Google's proprietary APIs. And as the functionality gap between open-source
5 Android apps and Google's proprietary apps grows, developers are more dependent
6 on GPS, and thus on Google. In retrospect, it is clear that the seemingly benevolent
7 act of Google's making the Android system open source was in reality the first step
8 by a monopolist to maintain and expand its monopoly by devious and unlawful
9 means.

10 114. Signing a preinstallation agreement is the only way for an Android
11 device manufacturer to preinstall any Google app, including Google Play. And in
12 order to be able to include Google Play, the manufacturer must also agree to
13 preinstall the YouTube app (among others), and give it a prime location on the
14 device's opening page. This is an important aspect of Google's strategy to continue
15 to divert search traffic from other online video platforms (such as Rumble) to its
16 YouTube platform though its unlawful and unfair activities. Signing the
17 preinstallation agreement is also the only way an Android device manufacturer can
18 gain access to GPS and the APIs many developers need for their apps to work
19 properly, at least without expensive and time-consuming reprogramming.

20 115. And any manufacturer installing Google Play or GPS must preinstall a
21 full suite of apps identified by Google; including the search access points most
22 frequently used by consumers: Chrome, Googlesearch app, Google search widget,
23 and Google Assistant. Google's search engine is the default on all these search
24 access points. Indeed, Google even uses the MADAs to control the appearance of
25 Android devices, requiring the manufacturer to place the Google search widget on
26 the home screen, and to preinstall Chrome, the Google search app, and other apps
27 (including the YouTube app) in a way that makes them most readily accessible, and
28 undeletable, by the user.

116. Moreover, before 2017, most MADAs also required manufacturers to set Google as the default general search engine for all key search access points on any device with preinstalled Google apps—these requirements are now found in the revenue sharing agreements discussed below.

117. All of this had the intended collateral effect (and benefit to Google) of its being able to continue to unfairly promote and divert traffic to YouTube and away from other online video platforms (including specifically Rumble) in the increasingly mobile smart device world.

GOOGLE’S REVENUE SHARING AGREEMENTS FOR ANDROID MOBILE DEVICES

118. As also alleged above, another way Google maintains its absolute control of the use of its so-called “open source” Android operating system is by entering into search revenue sharing agreements (RSAs) with Android manufacturers and carriers. Google generally requires exclusive distribution as the sole preset default general search service on an ever-expanding list of search access points; in exchange, Google remits to these companies a percentage of search advertising revenue. Google offers revenue sharing to Android device manufacturers only if they are MADA licensees, and Google offers revenue sharing to carriers only for devices built by manufacturers that are MADA licensees. The leading U.S. carriers (AT&T, T-Mobile, and Verizon) and the leading Android-based device manufacturer (Samsung) all have RSAs with Google.

119. Some of Google’s RSAs require blanket coverage for all Android devices sold by the other party to the RSA. Under this version of the RSAs, the distributor receives a payment from Google only if all of the distributor’s Android devices comply with the exclusivity requirements imposed by Google. Other RSAs provide for a model-by-model choice. Under this version of the RSAs, for the distributor to receive a share of the advertising revenue from any units of a model,

1 every unit of that model must comply with the Google-imposed exclusivity
2 requirements.

3 120. As innovation has led to an increase in the number of search access
4 points on mobile devices—including smart keyboards and voice assistants—Google
5 has also expanded its RSAs to close off these avenues to search rivals. In doing so,
6 Google is able, among other things, to continue to self-preference its YouTube app
7 and platform, and to harm competition, competitors (such as Rumble) and
8 consumers in the online video platform market.

9 **MOBILE INCENTIVE AGREEMENTS (MIAs)**
10 **FOR ANDROID MOBILE DEVICES**

11 121. In Google’s most recent round of negotiations with some Android
12 manufacturers, Google has replaced RSAs with mobile incentive agreements
13 (MIAs), under which Google pays manufacturers: (1) to forego preinstalling rival
14 general search services on their Android devices; and (2) to comply with a
15 significant number of “incentive implementation requirements”— including
16 preinstalling up to fourteen additional Google apps (including the YouTube app).
17 LG and Motorola have MIAs with Google.

18 122. To maximize payments under the MIAs, the manufacturers must also
19 set Google as the default for all search access points on nearly all of their devices.
20 Moreover, Google generally retains “sole discretion” to determine what constitutes
21 a “search access point,” and thus controls and can dictate the scope of coverage of
22 its exclusive contracts. Although the MIAs change the payment structure for
23 certain manufacturers, the agreements achieve the same end result as their
24 predecessors: search exclusivity for Google; which in turn allows Google to
25 continue through unfair and unlawful means to divert video search traffic to its
26 YouTube platform, which in turn harms competition, competitors (such as Rumble)
27 and consumers (including the content creators of Rumble Videos).
28

123. Today, Google has RSAs or MIAs with all major U.S. carriers and Android device manufacturers, as well as a number of smaller carriers and manufacturers.

**REVENUE SHARING AGREEMENTS WITH APPLE
ENHANCE, REINFORCE AND PROTECT GOOGLE’S MONOPOLY
POWER IN BOTH THE GENERAL SEARCH MARKET AND THE
ONLINE VIDEO PLATFORM MARKET**

124. Google’s revenue sharing agreements are not limited to its Android “partners.” Google has entered into revenue sharing agreements with rival browsers and other device manufactures, further blocking off search access points from competition, which in turn preserves its ability through search dominance to unfairly and unlawfully self-preference YouTube.

125. Google has had a series of search distribution agreements with Apple, effectively locking up one of the most significant distribution channels for general search engines. As is well known, Apple operates a tightly controlled ecosystem and produces both the hardware and the operating system for its popular products. Apple does not license its operating systems to third-party manufacturers and controls preinstallation of all apps on its products. The Safari browser is the preinstalled default browser on Apple computer and mobile devices. Apple devices account for roughly 60% of mobile device usage in the United States. Currently, Apple’s Mac OS accounts for approximately 25% of the computer usage in the United States.

126. In 2005, Apple began using Google as the preset default general search engine for Apple’s Safari browser. In return, Google gave Apple a significant percentage of Google’s advertising revenue derived from the search queries on Apple devices. Two years later, Google extended this agreement to cover Apple’s iPhones (as part and parcel of Google’s plan and goal to continue to dominate search in the mobile world, which in turn would allow it to continue to self-

1 preference its YouTube platform and app in order to monopolize the online video
 2 platform market). In 2016, the agreement expanded further to cover additional
 3 search access points—Siri (Apple’s voice-activated assistant) and Spotlight
 4 (Apple’s system-wide search feature)—making Google the preset default general
 5 search engine for both services. Today, Google’s distribution agreement with
 6 Apple gives Google the coveted preset default position on all significant search
 7 access points for Apple computers and mobile devices.

8 127. Maintaining this dominance in search in the increasingly mobile smart
 9 device world was and is critical to Google’s acquiring and maintaining the ability to
 10 unfairly and unlawfully self-preference its subsidiary companies and platforms,
 11 including YouTube.

12 128. Today, Google has RSAs with nearly every significant, non-Google
 13 browser other than those distributed by Microsoft, including Mozilla’s Firefox,
 14 Opera, and UCWeb. These agreements generally require the browsers to make
 15 Google the preset default general search engine for each search access point on both
 16 the web and mobile versions of their browsers. By controlling search, Google can
 17 and does control search results, including what research results are listed in the top
 18 spots and above the fold on the first page, including searches for video content, in
 19 which, as shown above, Google promotes and self-presences it YouTube platform.

20 **GOOGLE’S AGREEMENTS ALSO LOCK UP**

21 **MOBILE DISTRIBUTION OF SEARCH**

22 129. As mentioned above, early on Google recognized that the evolving
 23 transition to an ecosystem in which users were using mobile smart devices more
 24 than computers posed a serious threat to its ill-gotten monopoly power and
 25 monopolist’s profits, and it therefore conceived, adopted and implemented a
 26 strategy to neutralize that threat. Google’s strategy to ward off competition for
 27 mobile search distribution had two parts. First, recognizing that Apple’s iPhone
 28

1 was being widely used, Google expanded its existing search deal with Apple to
 2 cover mobile. Second, for other mobile distributors, Google continued to offer its
 3 Android operating system for “free” but with a series of interlocking distribution
 4 agreements to ensure its search-engine dominance in the mobile Android ecosystem.

5 130. Google’s strategy again worked to near perfection. Google has almost
 6 completely shut out its competitors from mobile distribution. As one executive for
 7 a competing search product recognized in frustration recently: “Google essentially
 8 [has] locked up ALL DISTRIBUTION” with its Apple deal and restrictive Android
 9 licensing terms, leaving the competitor’s product with “no mobile volume.”

10 **GOOGLE’S DISTRIBUTION ON APPLE IOS DEVICES**

11 131. Apple has not developed and does not offer its own general search
 12 engine. Under the current agreement between Apple and Google, which has a
 13 multi-year term, Apple must make Google’s search engine the default for Safari,
 14 and use Google’s search engine for Siri and Spotlight in response to general search
 15 queries. In exchange for this privileged access to Apple’s massive consumer base,
 16 Google pays Apple billions of dollars in advertising revenue each year, with public
 17 estimates ranging around \$8–12 billion. The revenues Google pays to Apple make
 18 up approximately 15–20% of Apple’s worldwide net income.

19 132. Although it is possible to change the search default on Safari from
 20 Google to a competing general search engine, few people do, making Google the *de*
 21 *facto* exclusive general search engine. That is why Google pays Apple billions of
 22 dollars every year in return for default status. Indeed, Google’s documents
 23 recognize that “Safari default is a significant revenue channel” and that losing the
 24 deal would fundamentally harm Google’s bottom line. Thus, Google views the
 25 prospect of losing default status on Apple devices as a “Code Red” scenario. In
 26 short, Google pays Apple billions of dollars to be the default search provider, in
 27 part, because Google knows the agreement increases the company’s valuable scale;
 28

1 and equally important, this also simultaneously denies that scale to rivals. And
2 concomitantly, by maintaining its position as the default search provider, Google
3 retains its ability to control (through its search algorithms and/or other means and
4 mechanisms) how the research results are displayed on the search page, which as to
5 searches for video content, allows Google to continue to unlawfully and unfairly
6 self-preference its YouTube online video platform to the detriment and damage of
7 Rumble (and its content creators) and to monopolize the online video platform
8 market.

9 133. Apple's RSA incentivizes Apple to push more and more search traffic
10 to Google and accommodate Google's strategy of denying scale to rivals (including
11 scale for rival online video platforms, such as Rumble). For example, in 2018,
12 Apple's and Google's CEOs met to discuss how the companies could work together
13 to drive search revenue growth. After the 2018 meeting, a senior Apple employee
14 wrote to a Google counterpart: "Our vision is that we work as if we are one
15 company."

16 134. The current version of the Google–Apple agreement substantially
17 forecloses Google's search rivals from an important distribution channel for a
18 significant, multi-year term. This agreement covers roughly 36% of all general
19 search queries in the United States, including mobile devices and computers.
20 Google estimates that, in 2019, almost 50% of its search traffic originated on Apple
21 devices.

22 135. Particularly when considered with the other exclusionary distribution
23 agreements alleged herein, Google's hold on Apple's distribution channel is self-
24 reinforcing, impairing rival general search engines' ability to offer competitive
25 products and making Google's monopolies impenetrable to competitive discipline.
26 By paying Apple a portion of the monopoly rents extracted from advertisers,
27 Google has aligned Apple's financial incentives with its own and set the price of
28 bidding for distribution extraordinarily high—in the billions.

136. Even if a rival was willing to make no money from a distribution relationship or could afford to lose money indefinitely, the rival would likely still fall short because the existing distribution agreements have for more than a decade denied rivals the benefits of scale, thus limiting: (1) the quality of their general search and search advertising products; as well as (2) the audience to attract advertisers. In other words, because of the longtime deprivation of scale, no other search engine can offer Apple (or any other partner) the mix of quality, brand recognition, and economics that market-dominant Google can; a dominance that Google has unlawfully obtained and continues unlawfully to maintain. And by cornering the search market, Google retains the ability to unfairly self-preference its own assets, include its YouTube platform and thereby monopolize the online video platform market.

HOW GOOGLE CONTROLS MOBILE DISTRIBUTION ON ANDROID DEVICES

137. Google controls the Android mobile distribution channel with its distributor agreements and owned-and-operated distribution properties.

138. Even though Android is open source, Google has used Android to protect Google's lucrative general search and search advertising monopolies. As discussed above, Google sets the rules and controls the Android ecosystem through anti-forking agreements, preinstallation agreements, and revenue sharing agreements. Notably, each of these agreements builds on the others to preserve control. Thus, Google will not pay a revenue share or financial incentive payment on a mobile device unless it is covered by the agreements discussed above: (1) an anti-forking agreement; (2) a preinstallation agreement ensuring that Google's search access points are preinstalled and given prominent placement; and (3) a revenue sharing or mobile incentive agreement that entitles Google to preset default status and, in most cases, prohibits preinstallation of search access points with rival

1 general search providers. By locking up search and YouTube app preinstallation
2 and placement (among others), Google retains control over search for video content
3 and can self-preference and direct traffic to YouTube, and away from Rumble,
4 thereby monopolizing the online video platform market.

5 139. Through these interlocking, anticompetitive agreements, Google
6 insulates and protects its monopoly profits, including those achieved from
7 YouTube. One internal Google analysis of these restrictive agreements concluded
8 that only one percent of Google's worldwide Android search revenue was currently
9 at risk to competitors. This analysis noted that the growth in Google's search
10 advertising revenue from Android distribution was "driven by increased platform
11 protection efforts and agreements." This extended and extends to the ad revenue
12 Google derives from YouTube through the massive traffic Google has wrongfully
13 diverted to YouTube, taken away from competitors such as Rumble.

14 140. An alternative operating system could serve as a pathway for
15 distribution of general search services other than Google, and would imperil the
16 free-flow of massive amounts of revenue that Google receives, including from
17 YouTube. However, Google's anti-forking/fragmentation agreements inhibit the
18 development of an operating system based on an Android fork that could serve as a
19 viable path to market for a search competitor.

20 141. Developing an operating system from scratch is extremely expensive
21 and time-consuming, but a manufacturer could start with existing Android open-
22 source code for a fraction of the cost and of the required development effort and
23 time. Moreover, the costs to app developers of "porting" GMS-compatible Android
24 apps to an Android fork are substantially less than developing apps for an entirely
25 new operating system.

26 142. Google's anti-forking/fragmentation agreements, however, have
27 inhibited operating system innovation through forking, ensuring that manufacturers
28 and distributors are beholden to Google's version of Android. Distributors know

1 that any violation of an anti-forking/fragmentation agreement could mean
2 excommunication from Google’s Android ecosystem, loss of access to Google’s
3 must-have GPS and Google Play, and millions or even billions of dollars in lost
4 revenue (including revenue sharing from Google). Thus, distributors avoid
5 anything that Google might deem “fragmentation”—a term that Google “purposely
6 leave[s] . . . very vague” and interprets broadly.

7 143. Pursuant to the preinstallation agreements discussed above, and further
8 discussed below, Google also has final say over whether a device is found to be
9 compatible with the technical specifications Google requires manufacturers to meet
10 before they can preinstall GMS. As a Google engineer noted, it must be “obvious
11 to the [manufacturers] that we are using compatibility as a club to make them do
12 things we want.” Google views its anti-fragmentation mandate, and its final
13 approval of devices before they launch, as a “poison pill” to prevent deviation from
14 the Google-controlled Android ecosystem. Clearly, what started out as a “carrot”
15 (open-sourced Android) led to the “stick” (such as required compatibility and
16 unacceptable risk of “forking” or “fragmenting”).

17 144. Google’s broad interpretation of the anti-forking and fragmentation
18 agreements, and the reluctance it creates among Android distributors to support
19 alternative versions of Android, presents barriers to entry; indeed even as to a
20 behemoth such as Amazon.

21 145. Amazon dared to develop its Fire OS operating system, a competing
22 fork of Android. Rather than preinstall Google’s search engine, GPS, Google Play,
23 or other Google apps on Fire devices, Amazon preinstalled its own proprietary apps
24 and agreed to make Microsoft’s Bing the preset default general search engine.
25 Amazon originally sold only Fire OS tablets, but in 2014 it launched a phone that
26 ran on Fire OS. The phone was not a commercial success and Amazon quickly
27 exited the phone business. Amazon continues to sell Fire tablets, which account for
28 less than 2% of mobile device usage in the United States.

1 146. Google’s anti-forking/fragmentation provisions and policies limited
2 the growth of Amazon’s mobile phone, and of Fire OS, because major
3 manufacturers declined to support Amazon’s phone out of fear doing so would risk
4 their lucrative deals with Google. The few manufacturers willing to work with
5 Amazon did not have the same marketing and logistics capabilities as top
6 manufacturers. Despite hundreds of millions of dollars in investment over nearly
7 ten years across tablets and phones, Fire OS still has not reached sufficient critical
8 mass to challenge Google’s version of Android and provide a significant alternative
9 path to market for search rivals. If even a company such as Amazon could not
10 breach the Google-created barrier to entry, what company could? The answer is
11 none. Google’s chokehold on search is impenetrable, and that chokehold allows it
12 to continue unfairly and unlawfully to self-preference YouTube over its rivals,
13 including Rumble, and to monopolize the online video platform market.

14 147. No Android fork has made significant inroads to challenge Google for
15 mobile devices, and there is no meaningful operating system alternative for
16 manufacturers and carriers to license. Using only the open-source version of
17 Android, or trying to develop a standalone system based upon the open-source
18 Android system, are simply not practical or commercially viable alternatives (as
19 Amazon discovered to its chagrin). These manufacturers and carriers are beholden
20 to Google’s Android ecosystem, which Google uses to preserve its monopolies in
21 general search, search advertising, general search text advertising and the online
22 video platform market.

23 148. Google’s anti-forking/fragmentation agreements further inhibit the
24 development of alternative Android operating systems for the next generation of
25 search distribution channels, such as smart watches, smart speakers, smart TVs, and
26 connected automobiles.

27 ///

28 ///

**GOOGLE’S PREINSTALLATION AGREEMENTS
EFFECT AN ILLEGAL TYING ARRANGEMENT THAT EXCLUDES
COMPETITION IN BOTH THE GENERAL SEARCH MARKET AND THE
ONLINE VIDEO PLATFORM MARKET**

149. As alleged above, Google uses preinstallation agreements—MADAs—to ensure that its entire suite of search-related products (including YouTube) is given premium placement on Android GMS devices. Consumers naturally and regularly turn to these prominently placed search access points to conduct searches. Google’s MADA preinstallation agreements also reinforce Google’s anti-forking requirements, either by including an anti-forking clause of their own or, more commonly, requiring device manufacturers to be signatories to an anti-forking/fragmentation agreement.

150. If a manufacturer wants even one of Google’s key apps and APIs, the device must be preloaded with a bundle of other Google apps selected by Google. The six “core” apps are Google Play, Chrome, Google’s search app, Gmail, Maps, and, as is most relevant here, the YouTube app. Manufacturers must preinstall these core apps in a manner that prevents the consumer from deleting them, regardless of whether the consumer wants them. These preinstallation agreements cover almost all Android devices sold in the United States.

151. Google’s preinstallation agreements effectuate a tie: that is, they condition the distribution of Google Play and GPS on the distribution, preferred placement and non-deletion of these other apps. This tie reinforces Google’s monopolies. The preinstallation agreements provide Android device manufacturers an all-or-nothing choice: if a manufacturer wants Google Play or GPS, then the manufacturer must also preinstall, and in some cases give premium placement to, an entire suite of Google apps, including Google’s search products and Google’s YouTube app. The forced preinstallation of Google’s apps (including the YouTube app) deters manufacturers from preinstalling those of competitors, including

1 Rumble’s app. This forecloses distribution opportunities to rival general search
2 engines and video platforms, protecting Google’s monopolies.

3 152. Google recognizes it could “make [the] phone experience better for
4 user[s] by ensuring . . . preloaded apps are deletable.” In large part, this is because
5 “[u]sers can free up space by deleting apps they don’t want.” Consumers desiring
6 to use non-Google search access points and non-pre-installed apps (including the
7 Rumble app) thus suffer because they cannot save storage space on their devices by
8 deleting unwanted Google apps. In this way, manufacturers must agree to make
9 their phones less attractive to consumers to accommodate Google’s efforts to lock
10 up search distribution (which in turn allows Google to continue to self-preference
11 YouTube unfairly and unlawfully. There is no reasonable or commercial benefit to
12 the consumer by preventing a consumer from deleting a Google app (including the
13 YouTube app).

14 153. Once the manufacturer adopts the necessary suite of Google apps, the
15 search access points of those apps are preset to default to Google’s search engine.
16 For example, the preinstalled version of Chrome is preset to default to Google
17 search. A senior executive at Google referred to changing Chrome’s preset search
18 default as “totally off the table” and insisted that if a manufacturer “values their
19 MADA, they cannot modify Chrome’s settings.” The result is that Google locks up

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

the access points to general search on Android phones, as shown here in Figure 7:



Figure 7

154. The preinstallation agreements are even more pernicious than basic ties because these agreements force distributors to configure the appearance of their phones to Google's specifications. For example, they require manufacturers to put the Google search widget on the device's default home screen. Google considers the search widget "an essential part of the Google brand" and rejects requests by manufacturers to waive the preinstallation agreement's search-widget requirement.

155. This locks up another search access point, as it would be impractical for a manufacturer to preinstall two search widgets on the same home screen. The same applies to preinstallation of a video platform app. Once the manufacturer is forced to preinstall the YouTube app and give it a prime-real-estate location, the manufacturer has no incentive to waste space on another video platform app, and as proof of that, no major manufacturer does so. Google controls search which in turn allows it to control video searches, which in turn allows it to continue to self-preference YouTube.

156. Google's preinstallation agreements also impose voice-search

1 preferencing on manufacturers and distributors. In addition to requiring the
2 preinstallation of Google Assistant, preinstallation agreements require
3 manufacturers to implement a Google hotword, which activates Google Assistant,
4 and ensure certain touch actions on the device's home button directly access
5 Google Assistant or Google. Google's agreements with most manufacturers also
6 set Google Assistant as the default assistant app. All of these promote and protect
7 Google's ability to unlawfully and unfairly self-preference its YouTube platform
8 over competitors, such as Rumble.

9 157. Rivals to Google Assistant are deprived of the same opportunities to
10 have similar installation and application of smart phones. Most of Google's
11 preinstallation agreements prevent rival assistants from being the preset default or
12 using a home button. Google also handicaps rival assistants by limiting the APIs
13 that non-Google apps can use, ensuring that the useful features, such as "always on"
14 microphone access that would enable the use of a hotword or the initiation of phone
15 calls, are available only to Google Assistant. Even Google Assistant's chief rival—
16 Amazon's Alexa—is unable to navigate these disincentives to get significant
17 preinstallation or functional integration on Android devices. Again, even behemoth
18 Amazon is boxed out.

19 158. Voice search is an important, emerging access point. Internal Google
20 documents have recognized that the "[v]oice platform will become the future of
21 search" and financial projections for the assistant category recognize "search
22 defensive value."

23 159. Partners that depart from the preinstallation agreements risk discipline
24 from Google. For example, in 2011, one major electronics manufacturer considered
25 giving a group of consumers outside the United States a choice between two home
26 screen experiences for their device: one home screen with the Google search widget
27 and a second home screen with a rival search widget. Discussing this proposal with
28 colleagues, one Google employee noted "[a]llowing a mode that does not have

1 Google as the default search provider and completely changes the home screen”
 2 would violate Google’s terms and risk breach (in addition to threatening Gog Goog.

3 160. In 2015, Google was concerned that a major United States carrier
 4 would ask manufacturers to install a search widget powered by the carrier’s in-
 5 house search engine. Google’s Vice President of Partnerships wrote to a colleague
 6 that Google needed to make clear to manufacturers that “[these] customization
 7 requests will not go far” and replacing the Google search widget with a different
 8 search box would violate the preinstallation agreement. Termination of this default
 9 agreement would, in turn, prohibit access to the entire GMS suite, including Google
 10 Play and GPS, and forfeit any potential share of Google’s search advertising
 11 revenue under a revenue sharing agreement. In short, as the above examples
 12 illustrate, Google’s documents show its successful efforts to discipline its
 13 counterparties, including major electronics companies and carriers.

14 **GOOGLE’S REVENUE SHARING AGREEMENTS ARE A KEY**
 15 **COMPONENT IN MAINTAINING GOOGLE’S MONOPOLY IN BOTH**
 16 **THE GENERAL SEARCH MARKET AND THE ONLINE VIDEO**
 17 **PLATFORM MARKET**

18 161. In exchange for a substantial portion of Google’s search advertising
 19 revenues, Android distributors agree to make Google the preset default general
 20 search engine for all significant search access points on their device. In addition,
 21 these agreements typically contain an exclusivity provision prohibiting the
 22 preinstallation of a competing general search service. These agreements are thus
 23 both offensive and defensive; a sword and a shield.

24 162. Google has recognized for some time that its revenue sharing
 25 agreements with Android device manufacturers and carriers provide exclusivity for
 26 its general search service on those devices. As stated explicitly in a draft 2014
 27 Google strategy deck (depicted in Figures 8 and 9 below), Google’s revenue
 28

1 sharing arrangements with Android manufacturers or OEMs “provide exclusivity of
 2 Search” and its deals with carriers similarly “prevent[] the pre-installation of other
 3 Search engines or browsers,” thus enabling Google “to protect Search exclusivity
 4 on the device as it makes its way to the user.” And this protected “search
 5 exclusivity is key to allowing and protecting Google’s ability to self-preference its
 6 YouTube platform and direct massive traffic to it that would otherwise have gone to
 7 its competitors, including Rumble.

8 **Google** In 2014, we paid \$217M to Android OEMs to distribute search

9 **MADA (Mobile Application Distribution Agreement):** Provides OEM's with the license to distribute/pre-load Google services on their Android-based smartphones

10 

11 **Top search bar:** Google default search on top search bar, powered by GSA

12 **Primary home screen:** Placement of Google folder with specified set of apps; Play Store placement, Chrome Browser

13 **Within Google folder:** Placement of specific apps, including Maps, Gmail, Google+, Photos, YouTube, Hangouts

14 **“Revshare deals provide **exclusivity of Search** on devices – can provide **more stringent requirements** as a result of payment . . . since 2012 renegotiation of deals have brought revshare % down substantially” (emphasis added)**

15

- MADA ensures placement and discoverability of Google search and Play Store on the device (through GSA or Chrome) and does not provide exclusivity (OEM is free to pre-load anything else on the phone)
- **Revshare deals provide exclusivity of Search on devices - can provide more stringent requirements as a result of payment**
- **Our current standard revshare is 16% on Search - since 2012, renegotiation of deals have brought revshare % down substantially; most of our partners have agreed to match this baseline**
- OEM revshare deals are global - however we only pay OEMs if we do not have a competing deal with a carrier (next slide)

16 Google Confidential and Proprietary 33

17 **Figure 8 (Android manufacturers)**

18 **Google** In 2014, we paid \$460M to Carriers to distribute search

19 

20 **Carrier Revshare Deals:** As part of our carrier deals, Android devices distributed by the carrier will have exclusivity of Google search on the device, preventing the pre-installation of other Search engines or browsers (see left)

21 **By having these deals in place (especially in markets that are dominated by carrier retail distribution, such as the US) we are able to protect Search exclusivity on the device as it makes its way to the user**

22 **“Alternate search app **cannot** be pre-installed” (emphasis added)**

23 **Similar to OEM revshare deals, our current standard revshare is 16% on Search - renegotiation of these deals have also brought revshare % down on carrier devices**

24 **We also pay carriers on Play purchases through the Direct Carrier Billing payment method - current revshare is 15% on Apps, and 6% on Content (music, movies, books)**

25 **“Carrier Revshare Deals: As part of our carrier deals, Android devices distributed by the carrier will have **exclusivity** of Google search on the device, **preventing the pre-installation of other Search engines** or browsers . . . By having these deals in place (especially in markets that are dominated by carrier retail distribution, such as the US) we are able to **protect Search exclusivity** on the device as it makes its way to the user” (emphasis added)**

26 Google Confidential and Proprietary 34

27 **Figure 9 (Android carriers)**

1 163. Similarly, one Google executive acknowledged that exclusivity is “the
2 general philosophy of the RSA or one of the tenets of the value exchanged in the
3 RSA.” Another Google executive noted, “our philosophy is that we are paying
4 revenue share *in return for* exclusivity.” These agreements are, as that executive
5 further explained, “really important” because “otherwise Bing or Yahoo can come
6 and steal away our Android search distribution at any time.” And if Bing or Yahoo
7 did in fact steal away a portion of Google’s Android search distribution, then it
8 would also lose its ability to unfairly and unlawfully direct video search traffic to its
9 YouTube platform.

10 164. As Google’s documents recognize, the preinstallation agreements and
11 revenue sharing agreements work together as a belt-and-suspenders strategy for
12 driving searches to Google (and therefore away from competitors) on Android
13 devices, and likewise, to drive video search traffic to YouTube, and away from
14 competitors, such as Rumble.

15 165. As one Google executive explained in 2017, Google uses revenue
16 sharing agreements “as a lever for motivating partner behavior that is consistent
17 with our goals for Google and the ecosystem,” and to “drive incremental revenue
18 (securing search defaults not covered by MADA).” By using its monopoly profits
19 and monopoly power, Google is able to impose even “more stringent requirements”
20 on manufacturers and carriers to obtain the preset default position on search access
21 points not covered by the preinstallation agreements. The combined result of
22 Google’s preinstallation and revenue sharing agreements is to lock up all the main
23 pathways through which consumers access search on Android devices, thus
24 foreclosing rivals and protecting Google’s monopoly positions.

25 166. The size of Google’s payments to Android distributors demonstrates
26 the enormous value of default status and exclusivity provided by the agreements.
27 Last year, Google paid major U.S. carriers, collectively, more than a billion dollars.
28

1 167. Other channels of distribution left for competitors are far inferior to
2 those paid for by Google and protected by its agreements. For example, a consumer
3 can in theory download a competing search app on his or her own. But as one of
4 Google’s executives bluntly put it, “most users just use what comes on the device”
5 and do not attempt to download or use other general search services. Google’s
6 revenue-sharing partners turn down opportunities to preinstall or otherwise enable
7 innovative, search-related apps (such as Rumble’s) because that could violate
8 Google’s demand for exclusivity.

9 168. Google also uses its agreements to ensure that new search access
10 points are not available to competitors. For example, Google developed a smart
11 keyboard—a mobile app that can be used as an alternative for the standard-issued
12 keyboards on smart phones—with the recognition that such keyboards might be
13 “the next big search access point.” Google relies on its preinstallation and default
14 restrictions in its revenue sharing agreements as a “strategic defense” against rival
15 keyboards that might provide a “[b]ridge” to rival general search engines.

16 169. Google likewise structures its agreements to penalize any distributor
17 that might walk away, tying them to Google. The typical term of the carrier and
18 manufacturer revenue sharing agreement is two to three years. If a carrier or
19 manufacturer does not renew its revenue sharing agreement with Google, the
20 distributor loses out on revenue share not only for new mobile devices but also for
21 the phones and tablets previously sold under and subject to its prior agreements
22 with Google, and which are already in the hands of consumers. This provision is
23 punitive to the carrier or manufacturer and helps to ensure that carriers and
24 manufacturers will not stray from Google.

25 170. To be attractive to a carrier or manufacturer, a rival search provider’s
26 offer for preset default status would need to cover not only the revenue the carrier
27 or manufacturer would have earned from Google for new devices, but also the
28 revenue that the carrier or manufacturer would have earned on all the devices that

1 are currently in the hands of consumers. Google will continue to benefit from those
 2 devices with defaults previously set to Google. A rival search provider is left with
 3 no practical way to ensure that it will generate revenues from those devices,
 4 regardless of how competitive its general search service might otherwise be.

5 171. In roughly a decade, no other general search provider has secured
 6 preset default search status on any preinstalled search access point on GMS
 7 Android devices. As with the Apple distribution agreements, the Android
 8 distribution agreements—taken together—are self-reinforcing, depriving rivals of
 9 the quality, audience, and financial benefits of scale that would allow them to
 10 mount an effective challenge to Google.

11 172. Particularly for newer entrants, the revenue sharing agreements present
 12 a substantial barrier to entry. These entrants cannot pay the billions of dollars that
 13 Google does for the most effective forms of distribution—premium placement and
 14 default status. Instead, they are relegated to inferior forms of distribution that do
 15 not allow them to build scale, gain brand recognition, and generate momentum to
 16 challenge Google.

17 **GOOGLE’S AGREEMENTS EVEN LOCK UP** 18 **BROWSER DISTRIBUTION**

19 173. Beyond its agreements locking up distribution on Android and Apple
 20 devices, Google also has entered into exclusive revenue sharing agreements with
 21 browsers. Google has recognized it is “crucial to retain web browser partnerships.”
 22 Google’s agreements with browsers generally require the browsers to make Google
 23 the preset default general search engine for search access points in both the
 24 browser’s computer and mobile versions.

25 174. In exchange for being the preset default general search engine, Google
 26 shares up to 40 % of the advertising revenue it generates from these search access
 27 points with Google’s browser rivals. Browser revenue sharing agreements typically
 28

1 last at least two years and are routinely extended. Browsers are one of the most
 2 important distribution channels for general search services because they are the
 3 gateway to the internet for many if not most consumers. Many search queries on
 4 mobile devices and computers are performed through the device's browser. Today,
 5 Google has revenue sharing agreements with the most widely used browsers in the
 6 United States, such as Apple's Safari browser and Mozilla's Firefox browser;
 7 Microsoft's browsers are the only notable exceptions. Over 85% of all browser
 8 usage in the United States occurs on Google's own Chrome browser or on one of
 9 the browsers covered by these revenue sharing agreements.

10 175. In a competitive market, rivals could compete to be the preset default
 11 general search engine on a browser. The general search services market has not,
 12 however, been competitive for many years. When considered with Google's other
 13 exclusionary agreements and its monopoly power, Google's conduct forecloses a
 14 critical avenue for search competitors to enter the market or increase distribution.
 15 In the absence of these agreements, rival browsers would have the ability to
 16 consider making other general search engines the preset default for some or all
 17 search access points, spurring greater competition in the general search services
 18 market and offering additional choices to consumers. As a Google employee once
 19 noted, Google's browser agreements can be "a good way to keep [a browser] away
 20 from Bing."

21 **GOOGLE'S MONOPOLIZATION OF THE ONLINE VIDEO**
 22 **PLATFORM MARKET HAS HARMED RUMBLE**
 23 **AND COMPETITION GENERALLY**

24 176. Google's monopolist's stranglehold on search, obtained and
 25 maintained through anticompetitive conduct, including tying agreements in
 26 violation of antitrust laws, has allowed Google to unfairly and wrongfully direct
 27 massive video search traffic to its wholly-owned YouTube platform, and thereby to
 28

secure for itself monopoly profits from ad revenue generated by views of video contents on the YouTube platform. A very large chunk of that video search traffic that was unfairly and wrongfully (mis)directed by Google to its YouTube platform should have rightfully been directly to Rumble's platform. Because it was not, Rumble (and in turn, the content creators who have exclusively licensed their videos to Rumble) have lost a massive amount of ad revenue they would otherwise have received but for Google's unfair, unlawful, exclusionary and anticompetitive conduct.

RUMBLE'S DAMAGES

177. Figure 10 below is a reprint of information that Google has provided to Rumble as part of Rumble's account with YouTube:



Figure 10

178. This Figure 10 shows that Rumble Videos for which Rumble is the original source and exclusive rights holder have received more than 9.3 Billion views globally through YouTube through September 2020, for which Rumble has received revenue from Google in the amount of \$4,345,883.76.

179. The usual metrics for determining revenue for online viewing of videos is Revenue Per Mille (RPM - or revenue per 1000 views), and Cost Per

1 Mille (CPM - cost per 1000 views). Using either metric, Rumble's average revenue
2 received per 1000 views through Google is about \$0.48 (forty-eight cents).

3 180. In stark contrast, for views of a Rumble video on Rumble's website,
4 the Gross CPM is approximately \$20/CPM, globally, conservatively speaking. Had
5 Rumble received its average global CPM on those 9.3 billion views instead of
6 receiving revenue of \$4.3 million, Rumble would have received additional revenue
7 of \$180 million. But this is just a portion of the damages proximately caused and
8 continuing to be caused to Rumble and its content creators by Google's unlawful
9 anticompetitive conduct.

10 181. According to industry reports, on average every visitor to YouTube
11 views 11 videos during that single visit. Had Rumble received those 9.3 billion
12 views on Rumble.com, Rumble would have had an additional 93 billion video
13 views, on top of the 9.3 billion views, which translates to damages of \$1.98 billion
14 at a CPM of \$20.

15 182. Rumble posts videos to YouTube because it must in order to survive.
16 This is a direct result of Google's unlawfully self-preferencing YouTube, and
17 rigging its search algorithms to push links to Rumble's platform "below the fold" or
18 off the "front page" altogether. Because of the Google/YouTube monopoly,
19 Rumble has had not viable option but to "play ball" with Google/YouTube.

20 183. A significant source of users and hence revenue for Rumble's
21 platform comes from those consumers who "find" Rumble's platform and video
22 content through online searching, primarily through Google, as these graphics
23 (Figures 7 and 8 from the DOJ Complaint) clearly show Google's dominance and

24 ///

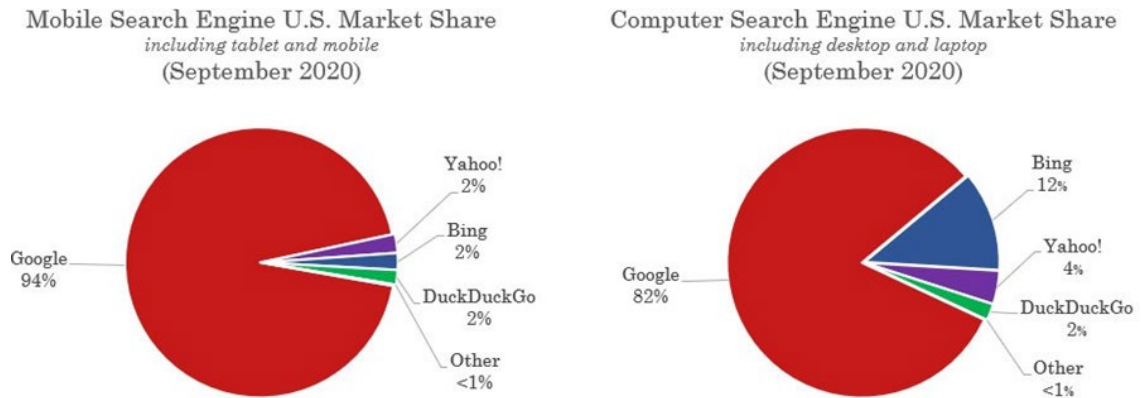
25 ///

26 ///

27 ///

28 ///

monopoly power in online searching:



184. Those consumers who “find” Rumble through an online Google search are much more likely to sign up (or register) with Rumble than those who “find” Rumble through a social media site, such as Facebook. Many of those users who register with Rumble will also begin to upload videos to the Rumble platform, thereby increasing Rumble’s scale, video content, brand awareness, value and revenue.

185. Since 2013, Google search traffic accounted for only roughly 12 million users on Rumble out of the 520 million reported by Google Analytics through December 31, 2020. Based upon Google Analytics data, this search traffic in turn accounted for roughly 238,000 uploaded videos to Rumble, yielding a performance of roughly 115 times better than did the traffic from Facebook. For every 12 million users that Rumble lost to YouTube due to Google’s anticompetitive and monopolist behavior and self-preferencing, Rumble would have realized roughly 238,000 new video uploads to rumble.com for Rumble to monetize and generate revenue for Rumble and its content creators.

186. But for the unlawful and anticompetitive, monopolistic conduct of Google, many more potential Rumble users would have “found” Rumble through a Google search, potentially as many as 9.3 billion according to YouTube analytics.

1 However, by always giving preference to YouTube and relegating Rumble to
2 below-the-fold locations in any search result for online videos, Google effectively
3 and purposefully directed that traffic away from Rumble to YouTube, thereby
4 depriving Rumble of those additional users, video content and revenue. This
5 unlawful conduct regarding Google's search results has been exacerbated by its
6 tying arrangements with Android-based smart phone manufacturers, who are
7 required to include the YouTube app on their phones. Given that much online
8 searching for videos is done on the searcher's smartphone, this unlawful conduct is
9 a significant factor in Google's achieving and maintaining monopoly power in the
10 online video market.

11 187. Rumble had roughly 1.4 million video uploads to its platform, which
12 generated 9.3 billion views on YouTube, and roughly \$200 million of lost ad
13 revenue. If all 9.3 billion viewers had landed on Rumble's website instead of
14 YouTube's, then Rumble would have generated an additional 184 million more
15 video uploads.

16 188. Based upon Google and YouTube analytics, Rumble incurred damages
17 on its 9.3 billion views that Google instead directed to YouTube with its unfair
18 YouTube-preferencing algorithms and tying arrangements. Rumble lost a huge
19 amount of revenue on the 9.3 billion views that Google wrongfully directed to
20 YouTube with its unfair YouTube-preferencing algorithms. If even a portion of
21 those 9.3 billion views had occurred on Rumble's website instead of YouTube that
22 would have generated well in excess of 100 million additional video uploads to the
23 Rumble platform, which in turn would have generated billions of more views on the
24 Rumble platform, and massive amounts of additional revenue for Rumble and its
25 content creators. If those 9.3 billion views had all occurred on Rumble's website, it
26 would have generated an additional 184 million video uploads. Those additional
27 184 million videos would have generated roughly 1.2 trillion additional views on
28

1 Rumble's platform. Those additional uploads and views would have produced
2 tremendous additional revenue to Rumble, and in turn to the video content creators.

3 189. In addition to Rumble's exclusive catalog of video content, Rumble
4 also incurred damages on its non-exclusive catalog, which is far larger than its
5 exclusive catalog.

6 190. Rumble reasonably believes that its damages as will be proven at trial
7 will greatly exceed \$2,000,000,000, before trebling or attorney fees and costs. The
8 impact on Rumble is only one example of how Google's exclusionary conduct has
9 blocked competition in the online video platform market.

10 **CLAIM FOR RELIEF**

11 ***Monopolization and Attempted Monopolization of the*** 12 ***U.S. Online Video Platform Market in Violation of Sherman Act § 2***

13 191. Rumble incorporates the allegations of the foregoing paragraphs as
14 though fully set forth here.

15 192. Google's conduct violates Section 2 of the Sherman Act, which makes
16 it unlawful for any person to "monopolize, or attempt to monopolize any part of the
17 trade or commerce among the several States, or with foreign nations...." 15 U.S.C.
18 § 2.

19 193. The online video platform market in the United States is a relevant
20 antitrust market. Google has obtained and maintains monopoly power in that
21 market and has done so by, among other things, leveraging its monopoly power in
22 the search engine market as alleged above.

23 194. Google has attempted to monopolize the U.S. video platform market
24 and has monopolized that market. Google has willfully maintained and abused its
25 monopoly power in the U.S. video platform market by the anticompetitive and
26 exclusionary conduct alleged above, which has included rigging its search engine
27 algorithms such that YouTube videos will always be listed first in search results
28

1 and requiring pre-installation and prominent placement of Google's YouTube apps
2 on all Android smartphones in the United States.

3 195. Google's exclusionary conduct has foreclosed a substantial share of
4 the U.S. online video platform market.

5 196. Google's anticompetitive acts have had harmful effects on competition
6 and consumers as alleged above.

7 197. The anticompetitive effects of Google's exclusionary conduct and
8 agreements outweigh any procompetitive benefits in this market, or that can be
9 achieved through less restrictive means.

10 198. Google's anticompetitive and exclusionary practices violate Section 2
11 of the Sherman Act, 15 U.S.C. § 2.

12 199. Rumble (and its content creators) have been and continue to be
13 damaged by Google's anticompetitive and exclusionary practices, and that damage
14 has been proximately caused by Google's anticompetitive and exclusionary
15 practices.

16 200. Rumble is therefore entitled to compensatory damages, trebled, and
17 Rumble should also be awarded its attorney fees and costs, pursuant to Section 15
18 of the Clayton Act.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Rumble prays for judgment against Google as follows:

- 21 1. that Rumble be awarded compensatory damages according to proof,
22 and that those damages be trebled;
- 23 2. that Rumble be awarded its attorneys' fees and costs;
- 24 3. that Google and its subsidiaries, dba's, divisions, affiliates, parents,
25 successors, assigns, officers, agents, representatives, servants, and employees, and
26 all persons in active concert or participation with them or any of them, be
27 preliminarily and permanently enjoined from the unlawful anticompetitive conduct
28 alleged above; and

1 4. that Rumble have such other and further relief as this Court deems just
2 and proper.

3 Dated: April 30, 2021

Respectfully Submitted,

4 BURKE, WILLIAMS & SORESENSEN, LLP

5
6 By: /s/ Robert W. Dickerson, Jr.

Robert W. Dickerson, Jr.

7
8 Attorneys for Plaintiff
RUMBLE, INC.

9
10
11 **DEMAND FOR JURY**

12 Plaintiff Rumble hereby requests a trial by jury for all issues properly
13 submitted to a jury.

14
15 Respectfully submitted,

16 Dated: April 30, 2021

BURKE, WILLIAMS & SORESENSEN,
LLP

17
18 By: /s/ Robert W. Dickerson, Jr.

19 Robert W. Dickerson, Jr.

20 Attorneys for Plaintiff
21 RUMBLE, INC.

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare as follows:

1. I am over the age of 18 and not a party to the within action.

2. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953, which is located in the city, county and state where the mailing described below took place.

3. On April 30, 2021, I caused to have deposited by United States Mail at Los Angeles, California in Los Angeles County, a copy of the following document(s):

FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF DUE TO ANTITRUST VIOLATIONS

4. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

5. These documents were addressed to the following parties:

John E. Schmidtlein
Benjamin Greenblum
Andrew Trask
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 2021, at Los Angeles, California.

Olga Valadez

Print Name

By: /s/ Olga Valadez

Signature