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The Google trial's dangerous secrecy

Defending a free and diverse press – a bedrock principle of democracy – should never come second to powerful corporate interests

The largest antitrust trial of the modern internet era, which wrapped up last month, has pitted the world's most popular search engine, Google, against the United States Department of Justice (DOJ).
The case hearkens back to the DOJ's landmark lawsuit against Microsoft in the 1990s, but with a critical difference: most of it was held behind closed doors. This unprecedented secrecy meant that only journalists and observers who were physically in the courtroom had access – albeit limited – to the proceedings.

Google's stated mission is to make the world's information universally accessible. But Google's actions during the trial, in which it was accused of illegally maintaining a search and advertising monopoly, stand in sharp contrast to that credo. They also set a dangerous precedent: a private company, in an effort to protect its core business and reputation, persuaded a court to limit transparency and public access to information, eroding press freedom and constraining news coverage of the trial in the US and abroad.

Diluting the power of a free press

From the start, Google went to great lengths to keep as much information as possible away from the public. The company successfully objected to the court providing a live audio feed of the proceedings and managed to convince the judge to sequester key witnesses' testimony, arguing that trade secrets could be revealed in open court. As the trial wound down, Google also challenged the DOJ's posting of evidence on its website, which led to the material's removal for a full week. *The New York Times*, with the support of other publications, filed a motion demanding that the court give reporters access to admitted trial exhibits.

As media observers noted, trade publications struggled to report on the

trial, presumably because of the costs associated with attending in person. As a senior writer at *MediaPost*, an online resource for advertising professionals, put it: 'if this trial was streamed – something Google opposed – I think we'd all be listening in.' Moreover, the few journalists who were in the courtroom were under immense time pressure to report, fact-check and link public records to articles. And with trust in traditional media at an all-time low, showing news events, not just reporting them, has become even more crucial.

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Foreign media coverage also suffered as a result. With only a handful of deep-pocketed US publications able to afford to report on the trial, most foreign outlets, especially in developing countries, had no choice but to source from them. A basic internet search for news about the Google trial in languages other than English reveals a heavy reliance on *Bloomberg*, *Reuters*, and *AP News*. This dilutes the power of a free press, which depends on multiple media outlets independently reporting on events in ways that meet their audiences where they are.

The ramifications of this antitrust trial, like Microsoft's before it, obviously are not limited to the US. Given that Google handles more than 90 per cent of internet searches worldwide, the company is an immensely important information gatekeeper. The lucrative business deals that Google makes with Apple and other tech companies to secure its position as the default search engine on their devices affect Brazil or South Africa as much as the US. In fact, Android's market share is far higher in developing countries. In terms of advertising revenue generated from search results, the same tools – and possibly the same strategies to control prices – are used in both the US and abroad.

Thus, a livestream of the trial and timely access to evidence would have made a great difference for press freedom worldwide. For example, with an audio feed, publications could have translated testimony and developed multimedia stories that were relevant to local audiences. This, in turn, could have created strong incentives for other market players, both competitors and clients of Google, to speak up about their own relationships with the company. Greater transparency may have sparked even more scrutiny of Google's behaviour – precisely what makes a free press so important.

It is not too late for the

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opportunity to reveal Big Tech's power to a global audience. The fact that Google paid $26 bn in 2021 to be the default search engine on several browsers and devices – like the iPhone – was divulged during cross-examination of one of the company's witnesses. Another of Google's witnesses inadvertently disclosed that the company pays Apple 36 per cent of its search-advertising revenue made through the Safari browser. It also became clear that Google faces remarkably little pushback when raising prices for search advertisements.

A verdict in the Google case is expected next year, but many believe it will not be the last time Big Tech companies are put on trial in the US. The DOJ has filed a second suit against Google, targeting its advertising business, which connects news publishers with advertisers, while the US Federal Trade Commission recently sued Amazon for its capture of online retail. It is not too late for the courts and the DOJ to correct the dangerous precedent of Google's secret trial. Defending a free and diverse press – a bedrock principle of democracy – should never come second to powerful corporate interests.

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