

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NEWSGUARD TECHNOLOGIES,
INC.,

Plaintiff,

v.

FEDERAL TRADE COMMISSION and
ANDREW FERGUSON, in his official
capacity as Chairman of the Federal
Trade Commission,

Defendants.

Civil Action No.: 1:26-cv-00353-DLF

ORAL ARGUMENT REQUESTED

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff NewsGuard Technologies, Inc. (“NewsGuard”) moves under Federal Rule of Civil Procedure 65 for a preliminary injunction against all Defendants, and submits the following, as elaborated upon in the accompanying Memorandum in Support of Motion for Preliminary Injunction.

On May 20, 2025, the Federal Trade Commission (“FTC”) issued an expansive CID to NewsGuard demanding a vast number of confidential and sensitive documents. The CID requires production of virtually all documents, information, and records of NewsGuard from the company’s inception to the present, including materials relating to NewsGuard’s analyses, methodology, editorial judgments, journalism, and reporting. It further requires identification of NewsGuard’s customers and subscribers, as well as production of NewsGuard’s communications and financial records.

Defendants also imposed a condition on the merger of Omnicom Group Inc. (“Omnicom”) and the Interpublic Group of Companies, Inc. (“IPG”) that prohibits the merged entity from contracting with NewsGuard or using its rating services. Following a multiyear campaign by Newsmax urging lawmakers and administration officials to use state power to silence NewsGuard’s speech, Defendants barred Omnicom from using third-party services that evaluate “viewpoints as to the veracity of news reporting” and “adherence to journalistic standards or ethics,” a condition that directly targets NewsGuard and its rating service.¹

Defendants’ actions violate NewsGuard’s First and Fourth Amendment rights. First, the FTC’s CID and the conditions imposed by the Omnicom Consent Order represent unconstitutional retaliation because they target NewsGuard’s journalistic activity in a manner sufficient to deter a person of ordinary firmness from engaging in protected expression. Second, Defendants’ open-ended investigation of NewsGuard—including demands for reporters’ notes, subscriber lists, and financial records—infringes NewsGuard’s First and Fourth Amendment rights and cannot satisfy constitutional scrutiny. Third, Defendants have unlawfully suppressed NewsGuard’s protected expression through the Consent Order by coercing Omnicom to sever business ties with NewsGuard, accomplishing indirectly what Defendants may not do directly.

Defendants’ actions are causing NewsGuard irreparable harm by chilling its First Amendment activity, forcing the diversion of resources from journalism to

¹ *In re Omnicom Group Inc.*, ¶¶ 1.D, 2.A, No. C-4823 (Sept. 26, 2025).

regulatory compliance, and deterring NewsGuard's clients from associating with the organization. Because NewsGuard is likely to succeed on the merits, the balance of equities strongly favors injunctive relief: there is a substantial public interest in ensuring that the government complies with the Constitution, and Defendants have no legitimate interest in enforcing unconstitutional regulatory actions. *See Media Matters for Am. v. Paxton*, 138 F.4th 563, 585 (D.C. Cir. 2025).

For these reasons, the Court should grant this Motion and order that:

1. The FTC, Chairman Ferguson, his officers, agents, servants, and employees, during the course of this matter and until otherwise ordered by this Court or the case reaches finality, are enjoined from initiating any action to enforce the CID.
2. The FTC, Chairman Ferguson, his officers, agents, servants, and employees, during the course of this matter and until otherwise ordered by this Court or the case reaches finality, are enjoined from initiating any action to enforce the Omnicom-IPG merger condition.

A proposed order is attached.

Pursuant to Local Civil Rule 7(m), on February 9, 2026, counsel for Plaintiff conferred in good faith with counsel for Defendants prior to filing the present motion to determine whether Defendants oppose the relief sought. Defendants advised they will oppose the motion for a preliminary injunction and requested Plaintiff's agreement to set a date for filing its opposition of forty-five days after the motion is filed. Plaintiff did not consent to the extension of time for filing. On February 10,

2026, Defendants advised Plaintiff's counsel that they plan to request a thirty-day extension for filing a response, which Plaintiff opposes.

Dated: February 11, 2026

Respectfully Submitted,

/s/ Robert Corn-Revere

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**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION
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INTRODUCTION

As former D.C. Circuit Judge Laurence H. Silberman warned, “the most heinous act in which a democratic government can engage is to use its law enforcement machinery for political ends.” *Media Matters for Am. v. Bailey*, Civil No. 24-cv-147 (APM), 2024 WL 3924573, at *18 (D.D.C. Aug. 23, 2024) (quoting Laurence H. Silberman, *Hoover's Institution*, WALL ST. J., July 20, 2005). Yet the Federal Trade Commission (“FTC” or “Commission”) under Chairman Andrew N. Ferguson is doing precisely that by deploying agency authority to investigate and penalize Plaintiff NewsGuard Technologies, Inc. (“NewsGuard”). Chairman Ferguson initiated and is pursuing this campaign because he erroneously believes NewsGuard’s news rating service is biased against conservative news sources. He is wrong about this—NewsGuard evaluates news sources based on nonpartisan and transparent journalistic criteria that are applied uniformly to news media across the political spectrum.

But his error is more fundamental than that—and far more serious—as it proceeds from the bizarre notion that NewsGuard, a private journalistic organization, somehow can be engaged in “censorship.” Chairman Ferguson’s belief that the FTC is authorized to be the arbiter of news judgment misunderstands the First Amendment completely, as the Free Speech Clause “*constrains* governmental actors and *protects* private actors.” *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019) (emphasis added). In our constitutional scheme the government has no legitimate role to decide “what counts as the right balance of private expression—to ‘un-bias’ what it thinks [is] biased.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 719 (2024). Chairman Ferguson’s confusion about this basic principle is chilling, for “[o]n the spectrum of dangers to free expression, there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana.” *Id.* at 741-42.

The FTC’s campaign against NewsGuard, including an unbounded and intrusive Civil Investigative Demand (“CID”) and a Consent Order that bars the world’s largest advertising agency holding company and its affiliates from using NewsGuard’s services, has already inflicted irreparable injury, and, unless enjoined, will cause far more harm. Administrative agencies that lack—or refuse to acknowledge—constitutional guardrails are a particular threat to a free society. For that reason it is the standard practice of federal courts “to issue injunctions to protect rights safeguarded by the Constitution.” *Bell v. Hood*, 327 U.S. 678, 684 (1946). This Court should do so here to prevent further damage to NewsGuard and First Amendment rights.

BACKGROUND

A. NewsGuard’s Ratings and Reporting About Online News Sources.

NewsGuard is a service founded in 2018 with the aim of providing consumers and companies detailed assessments of the reliability of news sources they might encounter online. Declaration of Matthew Skibinski in Support of Plaintiff’s Motion for Preliminary Injunction, ¶ 3 (Feb. 11, 2026) (“Skibinski Decl.”). NewsGuard was founded by two veteran journalists, Steven Brill (who previously established *The American Lawyer* and Court TV), and Gordon Crovitz (former publisher of *The Wall Street Journal*). *Id.*

Messrs. Brill and Crovitz created NewsGuard because they believed online users would benefit from transparent reports about the accuracy and reliability of news and information websites. NewsGuard’s guiding principle has been that no government entity should be in the business of deciding what news people consume, but neither should those decisions be left to unknown and unaccountable algorithms or partisan advocacy groups. *See id.* ¶ 4.

NewsGuard developed a rating process for assessing the reliability of news outlets based on nine journalistic criteria. These criteria assess adherence to basic, long-established practices of journalistic credibility and transparency. They include, for example, whether a news source

repeatedly publishes demonstrably false information, references multiple sources and differing viewpoints, effectively corrects errors, and fully discloses ownership and financing of the site. *Id.* ¶ 5.

NewsGuard fully discloses the nine criteria and explains how ratings are determined. *See id.* ¶ 5 (<https://www.newsguardtech.com/ratings/rating-process-criteria>). NewsGuard employs a team of journalists who review news websites to assign ratings and provide assessments. *Id.* ¶ 7. Each of the nine criteria is assigned a weighted number of points, which can total to a maximum of 100 points. Each site is assigned an overall score of 0 to 100 and a rating indicating the extent to which it adheres to the criteria in NewsGuard’s judgment. *Id.* ¶ 6.

NewsGuard also provides a “Nutrition Label” accompanying each website’s listed score, which sets forth in detail NewsGuard’s findings and ultimate determination. Nutrition Labels include a grid showing NewsGuard’s judgment of the site’s performance on each of the nine criteria, as well as a description of the content on the site, who’s behind it, and why it received the score it did. *See, e.g., id.* ¶ 8 & Exs. 1 and 2 (examples of full versions of Nutrition Labels). Nutrition Labels are painstakingly prepared and can run to 10,000 words or more.

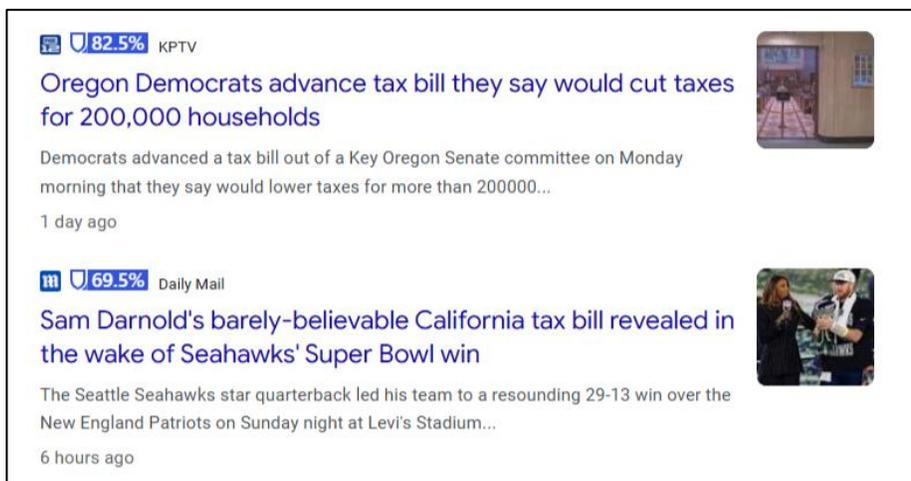
The ratings, Nutrition Labels, and assessments for news sites are initially prepared by NewsGuard journalist-analysts, but each is reviewed and fact-checked by senior NewsGuard personnel before publication to ensure they are as fair and accurate as possible. *Id.* ¶ 9. NewsGuard also contacts news site publishers to give them an opportunity to respond or object and includes relevant comments in Nutrition Labels. *Id.*

NewsGuard has rated 38,742 news sources, including 12,765 websites, since its founding. *Id.* ¶ 10.

B. NewsGuard's Services to Customers.

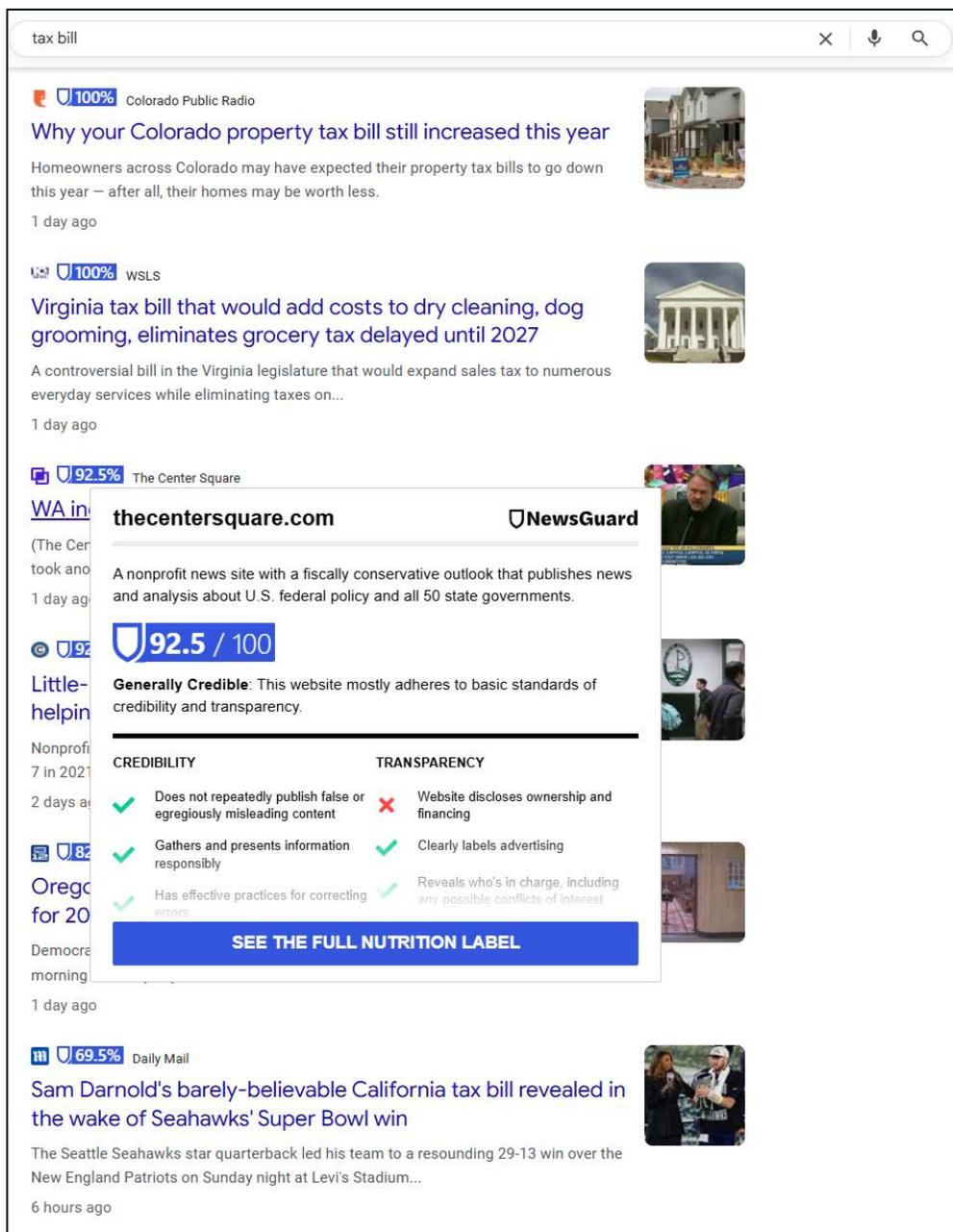
NewsGuard's services are available to consumers, businesses, advertisers, and others. *Id.*

¶ 11. Consumers can access NewsGuard reliability ratings through a monthly online subscription, which also gives them access to public reports the company produces about false claims spreading in the news. *Id.*¹ The subscription provides a browser extension that allows individuals using the Internet to see NewsGuard trust score icons next to links in their search results and social media feeds:



See id. ¶ 12. Hovering over an icon brings up a short description of the site and a link to “See the Full Nutrition Label” for a detailed description and why it received the score it did. *Id.* ¶ 13.

¹ NewsGuard is a leading source of journalism about foreign disinformation such as Russian, Chinese, and Iranian influence campaigns targeting Americans. *See, e.g.,* Eva Maitland & Madeline Roache, *Russia's War on Ukraine: Three Years, Three Hundred and Two False Claims* | *NewsGuard*, Newsweek (Feb. 21, 2025, at 06:00 ET), <https://www.newsweek.com/russia-ukraine-disinformation-newsguard-2034104>; Steven Lee Myers, *DeepSeek's Answers Include Chinese Propaganda, Researchers Say*, N.Y. Times (Jan. 31, 2025), <https://www.nytimes.com/2025/01/31/technology/deepseek-chinese-propaganda.html>; Gordon Crovitz, Opinion, *For Iran, Disinformation Comes Just Behind Assassination*, Hill (Nov. 21, 2024, at 12:30 ET), <https://thehill.com/opinion/international/5000222-iran-disinformation-trump-threat>. NewsGuard reporting has exposed how violent Hamas propaganda videos were promoted to teens on platforms such as TikTok, Facebook, and X during the war in Gaza. McKenzie Sadeghi, *Violent, Celebratory Hamas Videos Garner Millions of Views, Despite Bans by Tech Platforms*, NewsGuard (Oct. 26, 2023), <https://www.newsguardtech.com/special-reports/violent-celebratory-hamas-videos-garner-millions-of-views-despite-bans-by-tech-platforms>.



Businesses also subscribe to NewsGuard’s ratings and journalism, including, for example, news aggregators and public relations firms with interests in distinguishing between reliable and unreliable online content. *Id.* ¶ 14. Advertisers and ad agencies also use NewsGuard’s ratings to help make informed decisions about where (on which websites) ads should and should not be placed. *Id.* ¶ 15.

Online ads predominantly are placed through programmatic ad campaigns, *i.e.*, automated software-based buying and selling of digital ad placements. An average programmatic campaign runs on 44,000 websites at one time.² Major brands advertising online cannot know of all the tens of thousands of websites where their ads might appear. So, advertisers rely on ad agencies and automated services to provide methods to avoid ad placements that may be “brand unsafe,” meaning ones that could undermine their brands in the consumers’ eyes. Skibinski Decl. ¶ 16.

Brand safety for online advertisers has become a multi-billion-dollar industry. *Id.* ¶ 17. This is because, through programmatic ad campaigns, major international brands have had their advertisements unintentionally placed on websites considered unsafe and brand-damaging. *Id.* NewsGuard has reported on these concerns, noting ads inadvertently placed on websites that have been identified as advancing dangerous health treatments,³ promoting election misinformation,⁴ making false claims about the Israel-Hamas conflict,⁵ or spreading Russian propaganda.⁶ For

² See Press Release, Ass’n of Nat’l Advertisers, ANA Provides “First Look” at In-Depth Programmatic Transparency Study (June 19, 2023), <https://www.ana.net/content/show/id/pr-2023-06-programmaticstudy>.

³ Matt Skibinski, *Thousands of the World’s Most Trusted Brands Funded COVID-19 Misinformation*, NewsGuard, <https://www.newsguardtech.com/special-report-advertising-on-covid-19-misinformation> (last viewed Feb. 11, 2026).

⁴ Matt Skibinski, *Special Report: How Some of the World’s Largest Brands Funded the Misinformation Behind the Capitol Riot*, NewsGuard (Jan. 12, 2021), <https://www.newsguardtech.com/special-reports/special-report-advertising-on-election-misinformation>.

⁵ *Brand Danger: NewsGuard Finds 349 Top Global Brands Funding Misinformation About the Hamas-Israel Conflict with Programmatic Ads*, NewsGuard (Nov. 29, 2023), <https://www.newsguardtech.com/press/brand-danger-newsguard-finds-349-top-global-brands-funding-misinformation-about-the-hamas-israel-conflict-with-programmatic-ads>.

⁶ *One Year, 100 Myths: NewsGuard Has Identified More Than 100 False Narratives About the War in Ukraine*, NewsGuard (Feb. 16, 2023), <https://www.newsguardtech.com/press/one-year-100-myths-newsguard-has-identified-more-than-100-false-narratives-about-the-war-in-ukraine>.

example, NewsGuard reported that in 2019 Berkshire Hathaway's subsidiary GEICO was unintentionally the largest advertiser on Sputnik News, a Kremlin-controlled website.⁷ See Skibinski Decl. ¶ 18. Research studies by NewsGuard and others estimate that 67% of top brands inadvertently advertise on websites with problematic content,⁸ totaling some \$2.6 billion of advertising per year.⁹ Skibinski Decl. ¶ 19.

NewsGuard's customers in the advertising industry include ad agencies, ad targeting platforms, and advertisers themselves. *Id.* ¶ 20. Their continuing loyalty over the years shows that they value NewsGuard's ratings, analyses, and journalism. However, in this area NewsGuard is a small player compared to the large incumbent ad tech companies, accounting for less than 0.1% of the market for brand safety tools. *Id.*

C. Attacks on NewsGuard by Publishers Unhappy with Ratings.

For several years, NewsGuard has faced criticisms from across the political spectrum that NewsGuard's ratings are biased in one direction or another. In one year, for example (actually within a period of a few months), one advocacy group produced a report claiming NewsGuard's ratings are biased against conservatives while another published a separate report claiming NewsGuard's ratings are biased in favor of conservatives. *Id.* ¶ 21.

Perhaps not surprisingly, many of the attacks on NewsGuard have come from news publishers that receive lower scores based on NewsGuard's application of journalistic criteria. *Id.*

⁷ L. Gordon Crovitz, *How Amazon, Geico and Walmart Fund Propaganda*, N.Y. Times (Jan. 21, 2020), <https://www.nytimes.com/2020/01/21/opinion/fake-news-russia-ads.html>.

⁸ Wajeeha Ahmad, et al., *Companies Inadvertently Fund Online Misinformation Despite Consumer Backlash*, 630 NATURE 123, 124 (2024).

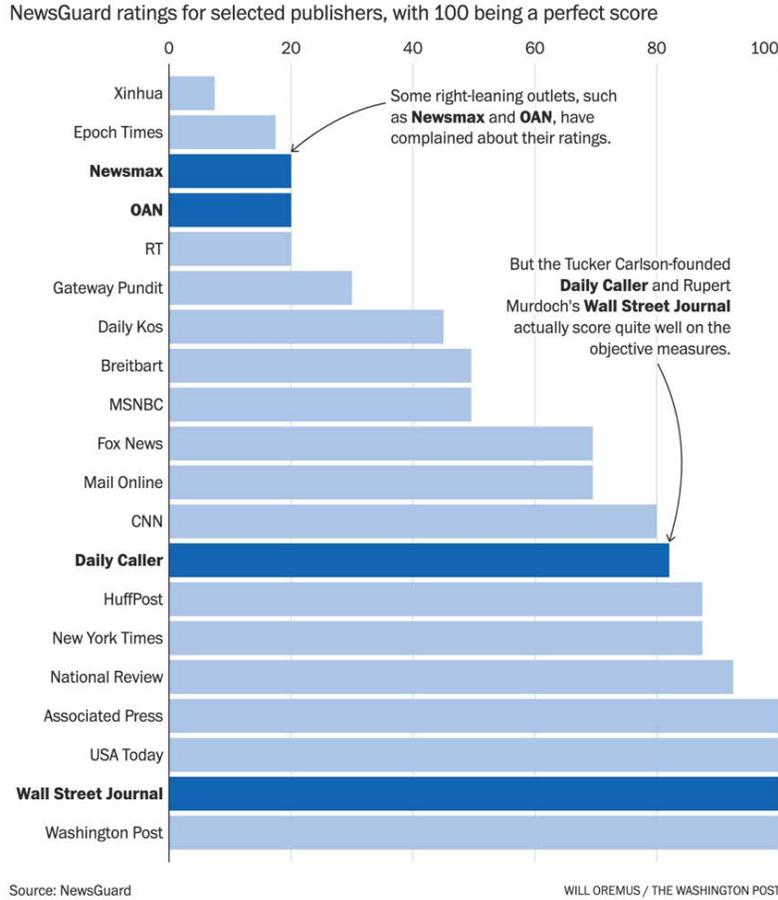
⁹ Matt Skibinski, *Special Report: Top Brands Are Sending \$2.6 Billion to Misinformation Websites Each Year*, NewsGuard, <https://www.newsguardtech.com/special-reports/brands-send-billions-to-misinformation-websites-newsguard-comscore-report>.

¶ 22. In 2023, *Consortium News*, a left-leaning website that received low reliability ratings, sued NewsGuard for defamation and supposed claims under the First Amendment, but its claims were dismissed, as the court held that NewsGuard’s ratings were protected editorial opinion. *Consortium for Indep. Journalism, Inc. v. United States*, 23 Civ. 7088 (KPF), 2025 WL 919504, at *16-20 (S.D.N.Y. Mar. 26, 2025).

At the same time, Newsmax, a conservative cable news network and digital media company, mounted a campaign attacking NewsGuard. Beginning in 2023 and for several years, Newsmax has asserted repeatedly in its programs and publications that NewsGuard is biased against conservative media and websites. Skibinski Decl. ¶ 24. Newsmax also received low ratings for adherence to journalistic standards. *Id.* ¶ 25. But perhaps more relevant to its motivation for attacking NewsGuard, Newsmax’s ratings are markedly lower than ratings for other conservative news sources such as Fox News, the *National Review*, and the *Washington Times*, which are Newsmax’s competitors for advertising dollars. *See id.*

Newsmax’s attacks were and are baseless. NewsGuard’s ratings of Newsmax—and all news sources—are based on nonpartisan journalistic criteria and are agnostic to the political or editorial viewpoints of the publishers. Many left-leaning outlets receive lower scores than comparable right-leaning sources. *See id.* ¶ 26 & Ex. 3. For example, Fox News receives a higher reliability rating than MSNBC, while the conservative *Washington Examiner* outscores the liberal *Daily Beast*. As reported by the *Washington Post* in 2024:¹⁰

¹⁰ Will Oremus & Naomi Nix, *This Company Rates News Sites’ Credibility. The Right Wants It Stopped.*, WASH. POST (Dec. 24, 2024), <https://www.washingtonpost.com/technology/2024/12/24/newsguard-disinformation-censorship-free-speech>.



D. Putative Congressional Investigations Targeting NewsGuard.

While Newsmax’s attacks on NewsGuard were false, its timing was opportune. When Republicans took control of the House in 2023, several committees opened investigations and issued statements taking aim at media and tech companies for supposed anti-conservative bias. Skibinski Decl. ¶ 27.

The House Oversight and Small Business Committees opened an investigation in June, 2024, with Oversight Committee Chairman James Comer appearing on Newsmax and agreeing that “their [NewsGuard’s] goal is obviously to bully conservative media out of existence.”¹¹

¹¹ Ted Johnson, *Attacking the Watchdog: How Media Rating Site NewsGuard Ended Up as a Target for GOP Lawmakers and Regulators*, Deadline (Dec. 19, 2024, at 12:17 ET), <https://deadline.com/2024/12/newsguard-newsmax-trump-fcc-1236202249>.

Skibinski Decl. ¶ 28 & Ex. 4. However, after NewsGuard presented evidence to the committee that its ratings are apolitical and nonpartisan, the investigation did not proceed. *Id.* ¶ 28.

In September 2024, the House Small Business Committee released an interim staff report entitled “Small Business: Instruments and Casualties of the Censorship-Industrial Complex,” which also took aim at NewsGuard with unsubstantiated claims of bias.¹² That effort also did not proceed further. *Id.* ¶ 29.

In early 2025, the Senate Judiciary Committee held a hearing on what it called the “Censorship Industrial Complex.” NewsGuard cooperated, addressed the Committee’s questions, again explaining and providing evidence that NewsGuard’s ratings are nonpartisan and do not reflect any anti-conservative bias. *See* Skibinski Decl. ¶ 30. The Committee found no evidence to the contrary, and this investigation also has not proceeded. *Id.*

E. Administration Officials’ Public Attacks Targeting NewsGuard.

Andrew Ferguson has been a longtime critic of NewsGuard. As a Commissioner on the FTC and continuing after he was appointed Chairman by President Trump, Ferguson has promoted an ideologically motivated effort to pursue and censor NewsGuard and other organizations that address the reliability of online sources. As reflected in his public statements and those of others in the administration (notably Brendan Carr, Chairman of the FCC), Ferguson’s view is that (1) the federal government can regulate “purely private censorship,” *i.e.*, the government can investigate and punish private parties’ speech and editorial views if the government thinks they are biased; (2) providing website ratings or analyses to advertisers to help them protect brand safety

¹² H. Comm. on Small Bus., 118th Cong., *Small Business: Instruments and Casualties of the Censorship-Industrial Complex* 42–59 (Interim Staff Rep. 2024), https://smallbusiness.house.gov/uploadedfiles/house_committee_on_small_business_-_cic_report_september_2024.pdf.

constitutes collusive and impermissible “ad boycotts;” and (3) the government can use its full panoply of powers to pressure, intimidate, and coerce parties—directly and indirectly—to censor speech the government cannot ban outright. Ferguson’s specious theory is wrong under the law, but that has not stopped him from pursuing it—in particular, to attack NewsGuard.

On November 12, 2024, then-Commissioner Ferguson posted on X about the closure of the U.S. Department of State’s Global Engagement Center¹³ by referring to NewsGuard specifically, asserting it had supposedly “led collusive ad-boycotts—possibly in violation of our antitrust laws—to censor the speech of conservative and independent media in the United States.”¹⁴ Skibinski Decl. ¶ 31 & Ex. 5. In fact, NewsGuard’s work for the State Department traced how Russian influence operations spread throughout Latin America via Venezuelan state media. It had nothing to do with NewsGuard’s ratings of news sources. Shortly afterward, Ferguson appeared in a podcast interview discussing how a new Republican-led FTC (after President Trump’s inauguration) could act against organizations he believes are part of the “censorship industrial complex.”¹⁵ Again he called out NewsGuard by name and warned that “antitrust laws

¹³ The Global Engagement Center was an interagency entity established in 2016 to expose and counter foreign propaganda and disinformation, closed in April 2025 by Secretary of State Marco Rubio following accusations by GOP lawmakers that the office censored conservative voices. *See* Maggie Miller, *State Department Eliminates Key Office Tasked with Fighting Foreign Disinformation*, Politico (Apr. 16, 2025, at 13:25 ET), <https://www.politico.com/news/2025/04/16/state-department-shutters-gec-foreign-disinformation-00292982>.

¹⁴ Andrew Ferguson (@AFergusonFTC), X (Nov. 11, 2024, at 20:51 ET), <https://x.com/AFergusonFTC/status/1856152760850243905>.

¹⁵ Mike Benz (@MikeBenzCyber), X (Nov. 24, 2024, at 18:59 ET), <https://x.com/mikebenzcyber/status/1860835679560765841>.

may have something to do with what’s been going on [with] ... advertiser boycotts.”¹⁶ Skibinski Decl. ¶ 32 & Ex. 6.

Later in November 2024 during an interview on Steve Bannon’s WarRoom podcast, Ferguson reiterated his view of the importance of going after “purely private censorship” and the “censorship industrial complex.”¹⁷ Skibinski Decl. ¶ 37 & Ex. 7. “[P]rogressives, Silicon Valley, everyone who is fighting ‘disinformation,’ they’re not just going to give up because of the election And that’s where I think that it’s really important that the FTC take investigative steps in the new administration under President Trump.”¹⁸ *Id.*

Brendan Carr, the Chairman of the Federal Communications Commission appointed by President Trump, has echoed Ferguson’s attacks on NewsGuard. In a November 2024 letter to the CEOs of Alphabet, Microsoft, Meta, and Apple, then-Commissioner Carr claimed NewsGuard was part of a “censorship cartel” and that the company “leverag[es] its partnerships with advertising agencies to effectively censor[] targeted outlets.”¹⁹ Carr said the incoming Trump Administration would investigate and take action against NewsGuard and companies that used its

¹⁶ *Id.*; see also Andrew Ferguson (@AFergusonFTC), X (Nov. 27, 2024, at 09:33 ET), <https://x.com/AFergusonFTC/status/1861780403092099278> (Ferguson post on X forwarding podcast host’s tweet that Ferguson had “laid out a compelling vision for how the FTC can take on advertiser boycott collusion in the Internet censorship space”).

¹⁷ Kari Donovan, *Bannon’s WarRoom, Show Clip Roundup 11/30/2024 [AM]*, WarRoom (Nov. 30, 2024), <https://warroom.org/bannons-warroom-show-clip-roundup-11-30-2024-am>.

¹⁸ *Id.*

¹⁹ Letter from Brendan Carr, FCC Comm’r, to CEOs (Nov. 13, 2024), <https://www.fcc.gov/sites/default/files/DOC-407732A1.pdf>.

services for protecting brand safety, declaring that the so-called “cartel” must be “completely dismantled.”²⁰ *See* Skibinski Decl. ¶ 34 & Ex. 8.

Echoing Carr’s threats, in December 2024 Commissioner Ferguson asserted the FTC “ought to conduct ... an investigation” because, he said, NewsGuard “seems to give a free pass to ... major left-leaning outlets.”²¹ Skibinski Decl. ¶ 35 & Ex. 9. At the time, Ferguson was a candidate for FTC chairman, and in public statements to promote his candidacy, he touted that he had a “track record of standing up to ... the radical left” and would “[i]nvestigate advertiser boycotts” and ““progressives who are targeting disinformation.””²² Skibinski Decl. ¶ 35 & Ex. 10. Ferguson’s and Carr’s publicized comments about NewsGuard ratings were simply false. NewsGuard responded and said so, demonstrating that many conservative-leaning news sources earn high reliability ratings while other, liberal publications receive lower ratings based on NewsGuard’s journalistic criteria.²³

But the facts did not deter the FTC or get in the way of its vendetta against NewsGuard. In February 2025, after Ferguson was named Chairman, the Commission issued a Request for Information (“RFI”) seeking public comment on “Technology Platform Censorship,” asserting

²⁰ *Id.*

²¹ Concurring Statement of Commissioner Andrew Ferguson, *FTC v. 1661, Inc. d/b/a GOAT* (Dec. 2, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-goat-concurrence.pdf.

²² Press Release, PunchBowl News, FTC Commissioner Andrew N. Ferguson for FTC Chairman, <https://punchbowl.news/wp-content/uploads/FTC-Commissioner-Andrew-N-Ferguson-Overview.pdf>.

²³ Statement from Gordon Crovitz, NewsGuard Co-CEO, on Brendan Carr Letter (Nov. 15, 2024), <https://www.newsguardtech.com/wp-content/uploads/2024/11/NewsGuard-Statement-on-Brendan-Carr-Letter.pdf>.

that social media providers and other “tech platforms” are engaged in “censorship” that is “potentially illegal.”²⁴ Skibinski Decl. ¶ 37 & Ex. 12.

In an April 2025 interview, Chairman Ferguson explained how the FTC could use its “tremendous array of investigative tools” and “coercive power—formal and informal” to demand compliance to its views about supposed online “censorship.” Ferguson laid out a roadmap of tactics his FTC would later use against NewsGuard: “The regulators can show up, they can audit, they can investigate, they can cost you a lot of money, and the path of least resistance is: ‘Do what we say.’”²⁵ Skibinski Decl. ¶ 38 & Ex. 13.

Ferguson’s message was clear that the FTC would use its powers and the burdens and expenses it can impose not to determine if there was any legitimate basis for regulation, but rather to intimidate and coerce NewsGuard to do what the FTC demands. He noted that the FTC’s investigative powers and tools “are expensive when applied to you even if we don’t win at the end of the day, so knuckle under.”²⁶ Or, in the words of FCC Chairman Carr in his not-so-subtle threat to ABC and its affiliate stations about Jimmy Kimmel’s late-night comedy monologue mentioning Charlie Kirk (which the administration found objectionable): “[W]e can do this the easy way or the hard way.”²⁷

²⁴ Press Release, Fed. Trade Comm’n, Federal Trade Commission Launches Inquiry into Tech Censorship (Feb. 20, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/02/federal-trade-commission-launches-inquiry-tech-censorship>; see Request for Public Comment Regarding Technology Platform Censorship, https://www.ftc.gov/system/files/ftc_gov/pdf/P251203CensorshipRFI.pdf.

²⁵ *Transcript: FTC Chairman Andrew Ferguson Keynote Part II*, ProMarket (Apr. 21, 2025), <https://www.promarket.org/2025/04/21/transcript-ftc-chairman-andrew-ferguson-keynote-part-ii>.

²⁶ *Id.*

²⁷ Brian Stelter, *How Brendan Carr, the Attack-Dog FCC Chair, Helped Take Down Jimmy Kimmel with Words, Not Actions*, CNN (Sept. 18, 2025), <https://www.cnn.com/2025/09/18/media/brendan-carr-jimmy-kimmel-fcc-first-amendment>; see

In earlier days (and different political climates), Ferguson and Carr said very different things about First Amendment protections and limitations on government powers to restrict or censor speech. Before he was appointed as FTC Chairman, Ferguson said “No government agency should be in the business of policing speech.”²⁸ Before he became FCC Chairman, Carr said that “the government shutting down speech” is “a 1A [First Amendment] issue, but “a private platform doing it [is] not.”²⁹ “It’s always a person in power (merely fallible or with a political agenda) that censors speech.”³⁰ But that was then; this is now.

F. FTC’s Tactics and Threats to Suppress Other Platforms.

The FTC’s tactics toward NewsGuard are part of a broader retaliatory campaign against tech and media companies (including other review and rating services) for exercising their First Amendment rights.

In May 2025, the FTC launched an extraordinarily broad, intrusive investigation of Media Matters for America (a nonprofit media watchdog organization), when it published articles about the rise of “extremist and racist rhetoric” on X after Elon Musk’s acquisition of the platform, reporting that X began placing major companies’ ads “next to pro-Nazi content.” *Media Matters for Am. v. FTC*, Civil Action No. 25-1959 (SLS), 2025 WL 2378009, at *2–3 (D.D.C. Aug. 15, 2025).

Mike Wendling, *What Does the FCC Do – and Can It Revoke a TV Network’s License?* BBC (Sept. 19, 2025), <https://www.bbc.com/news/articles/c87yel3wgqgo>.

²⁸ Andrew Ferguson (@AFergusonFTC), *supra* note 14.

²⁹ Brendan Carr (@BrendanCarrFCC), X (Apr. 15, 2020, at 18:47 ET), <https://x.com/BrendanCarrFCC/status/1250601632339034114>.

³⁰ *Id.*

Musk responded by promising to file a “thermonuclear lawsuit against Media Matters.” *Id.* at *3. Musk’s vendetta was picked up and advanced by many Republican allies, including state attorneys general and the FTC and FCC. For example, Stephen Miller (the current White House deputy chief of staff) accused Media Matters of “fraud” for its reporting, urging the “2 dozen+ conservative state Attorneys General” to go after the organization. *Id.*

The attorneys general of Texas and Missouri took up the cudgel and issued overbroad, oppressive CIDs to Media Matters. Media Matters sued and won preliminary injunctions precluding both investigations in this Court.

In the case concerning the Texas CID, this Court entered a preliminary injunction blocking the investigation, which the D.C. Circuit affirmed. *Media Matters for Am. v. Paxton*, 732 F. Supp. 3d 1 (D.D.C. 2024), *aff’d*, 138 F.4th 563, 569 (D.C. Cir. 2025). The Circuit Court opined that Media Matters was the “target of a government campaign of retaliation” and an “arguably bad faith investigation” infringing “exercise of their First Amendment rights and imposing special burdens on their newsgathering activities and operation of their media company.” 138 F.4th at 581.

In the case concerning the Missouri investigation, this Court held: “A reasonable factfinder is likely to interpret Defendants’ words as targeting Media Matters not for legitimate law enforcement purposes but instead for its protected First Amendment activities.” *Media Matters for Am. v. Bailey*, 2024 WL 3924573, at *15 (D.D.C. Aug. 23, 2024).

But the FTC was undeterred by the failed cases of the Texas and Missouri AGs or the rulings of this Court and the D.C. Circuit that the states’ actions and coercion against Media Matters were pretextual pursuits in likely violation of the First Amendment. The FTC decided to go after Media Matters with an extensive, burdensome CID of its own.

On May 20, 2025, the FTC issued a CID to Media Matters with 20 detailed specifications demanding all documents and information about methodologies for addressing online speech or misinformation; all communications with tech companies or platforms; everything related to Media Matters' newsgathering, reporting, and editorial decisions; all programs, policies, and analyses; all of the company's financial reports and information, and much more. *Media Matters v. FTC*, 2025 WL 2378009, at *5.

Media Matters filed suit in this Court alleging the FTC violated First and Fourth Amendment rights by pursuing its onerous investigation in retaliation for Media Matters' speech. Media Matters moved for a preliminary injunction to bar the FTC's investigation from going forward, which this Court granted, noting: "This case presents a straightforward First Amendment violation." *Id.* at *1. The Court rejected the government's argument that the FTC Act foreclosed any suit in the district court, observing, *inter alia*, that reading the statute to preclude Media Matters' First Amendment claims would "foreclose all meaningful judicial review." *Id.* at *11 (quotation marks omitted).

The FTC moved in the D.C. Circuit for a stay of the District Court's preliminary injunction order pending appeal. The Circuit Court denied the emergency request. No. 25-5302, 2025 WL 2988966 (D.C. Cir. Oct. 23, 2025) (*per curiam*).³¹

The FTC's CID to Media Matters is just one of many the Commission has issued and pursued against advertisers and ad agencies, third-party review services, and others in the FTC's pursuit of its theory. In addition to NewsGuard and Media Matters, the FTC has also pursued Global Disinformation Index, a nonprofit news review service, Integrated Ad Science, Inc., a brand

³¹ The FTC has appealed the *Media Matters* preliminary injunction order, and that appeal remains pending. No. 25-5302 (D.C. Cir. docketed Aug. 19, 2025).

safety platform, and reportedly a total of at least sixteen media credibility and news rating organizations.³²

G. The FTC’s Burdensome CID to NewsGuard.

On May 20, 2025, the FTC issued a sweeping CID to NewsGuard, 21 pages long, containing 31 Specifications (with dozens of subparts) demanding vast numbers of confidential and sensitive documents.

The CID requires production of “all documents relating to NewsGuard’s News Reliability Ratings and any other rating[s]”; all materials about NewsGuard’s work product and methodology; all documents about websites and news sources rated; all ratings and reviews issued; any and all analyses of the effects of NewsGuard’s ratings on advertisers and publishers; and any studies relating to social media or digital advertising; identification of all NewsGuard customers; and essentially all communications from or to NewsGuard. *See* Skibinski Decl. ¶ 40 & Ex. 15 (FTC Civil Investigative Demand, FTC File No. 251-0061 (May 20, 2025)); *see, e.g.*, NewsGuard CID Specifications 5, 8, 11, 12, 14-16.

Among its all-inclusive document demands, the CID also requires production of materials relating to NewsGuard’s journalism and reporting, including reporters’ notes and sources, as well as every financial statement, budget, profit and loss statement, cost center report, profitability report, and any other financial report prepared by or for NewsGuard. NewsGuard CID Specifications 5, 27, 28.

The CID calls for all documents from January 1, 2018, to the present. NewsGuard CID at 8 (Instruction I1). As NewsGuard was founded and began operations in 2018, it is no exaggeration

³² Kendra Barnett, *EXCLUSIVE: FTC Probe Expands to IAS Over Alleged Ad Boycotts, Lawsuit Reveals*, Adweek (Feb. 7, 2026), <https://www.adweek.com/media/exclusive-ftc-probe-expands-to-ias-over-alleged-ad-boycotts-lawsuit-reveals>.

to say that the CID demanded virtually all documents, information, and records of NewsGuard, including those relating to NewsGuard's analyses, methodology, editorial judgments, customers, journalism and reporting.

Under the FTC Act, the Commission was required to state the specific conduct constituting an alleged violation that is the subject of investigation and the provision of law applicable to such violation. 15 U.S.C. § 57b-1(c)(2). The FTC did not do that in the NewsGuard CID, leaving the company to guess what the agency alleged was at issue or how it could have anything to do with legitimate enforcement of antitrust or competition laws.

On its face, the CID raised serious concerns, as it was targeted at free speech and associational rights of the company and its customers and was extraordinarily overbroad and burdensome. NewsGuard raised its concerns from the outset and throughout its dealings with FTC staff, attempting to explain that NewsGuard's ratings, its editorial decisions, and its dealings with customers are plainly protected First Amendment activities. Skibinski Decl. ¶ 42.

Still, NewsGuard sought to work constructively with FTC staff to provide such information as it could without infringement of First Amendment rights. NewsGuard participated in ten meet-and-confer discussions over the course of eight months and produced over 40,000 pages of documents. *Id.* ¶ 43.

In the discussions with FTC staff, NewsGuard demonstrated (as it had earlier in information provided to congressional committees) that its ratings utilize established journalistic standards and practices. NewsGuard also submitted information demonstrating that the company's share of the market for advertiser brand safety tools is so *de minimis*—less than 0.1%—that NewsGuard could not possibly be a legitimate target of an antitrust investigation of that market. *Id.* ¶ 44.

By January 2026, FTC staff made clear to NewsGuard that its good faith efforts to cooperate were futile. On January 15, 2026, two days after the parties' last meet-and-confer discussion, FTC staff sent a letter purporting to be a "good faith effort to reduce NewsGuard's burden," but which was in reality a doubling down on the CID's unconstitutional demands. *Id.* ¶ 45 & Ex. 16.

Despite NewsGuard's seven months' efforts to cooperate, FTC staff simply repeated several of the most intrusive, infringing demands made from the outset, including: (1) identification of all NewsGuard subscribers; (2) communications with customers; (3) identification of all entities to which NewsGuard had ever assigned a News Reliability Rating; (4) the particulars of each rating assigned to each entity over time; and (5) documents to show how NewsGuard has developed methodologies for ratings, including internal correspondence. *Id.* ¶ 46.

The FTC's persistent, repeated demands for identification of NewsGuard's subscribers (and production of all communications with them) are especially troubling. Given the tactics and pronouncements of Chairman Ferguson and FCC Chairman Carr about targeting tech and media companies supposedly associated with a "censorship cartel," NewsGuard has ample grounds for concern the FTC aims to find NewsGuard's customers to pressure them, too. *Id.* ¶ 47. NewsGuard has explained to FTC staff that the demands for customer lists and communications plainly violate First Amendment rights of free speech and association, but explanations of the law have fallen on deaf ears at the FTC. *Id.* ¶ 42.

Throughout the dealings with NewsGuard, FTC staff refused to give assurances that NewsGuard's productions and disclosures satisfied the CID, and they reiterated that position in the January 15, 2026 letter. FTC staff instead insisted NewsGuard remains obligated to provide all documents and information called for by the *original* CID. *Id.* ¶ 48.

Responding to the CID was an immensely time-consuming and expensive effort. NewsGuard's executives and staff spent hundreds of hours working to provide information and documents to the FTC. NewsGuard's expenses mounted as the investigation continued, to the point that legal fees alone amounted to more than 30% of NewsGuard's total revenues from its sales of brand-safety services to advertising industry customers. *Id.* ¶ 49.

The January 15, 2026, letter makes clear the FTC will continue to pursue NewsGuard with the aim of imposing burdens and expense regardless of whether it has any legitimate grounds, until, in Chairman Ferguson's words, the company "knuckles under." NewsGuard will not do so, and accordingly filed a petition to quash the CID with the FTC,³³ and filed the present action in this Court.

H. The FTC's Consent Order Blacklisting NewsGuard.

Unbeknownst to NewsGuard at the time, the FTC's CID was only a first round in its retaliatory censorship campaign against NewsGuard. As NewsGuard was attempting to work in good faith with the FTC concerning the CID in early 2025, the Commission was working separately to use a merger-review proceeding as an excuse to impose an order aimed at blacklisting NewsGuard.

In an unprecedented move, the FTC imposed a condition on the merger of Omnicom Group Inc. (Omnicom), and The Interpublic Group of Companies, Inc. (IPG) to specifically target NewsGuard by prohibiting the merged company or its affiliates from contracting with NewsGuard or using its rating services.

³³ Petition to Quash, Civil Investigative Demand Dated May 20, 2025, to NewsGuard Techs., Inc., FTC File No. 251-0061 (Jan. 16, 2026).

Omnicom and IPG were the world's third and fourth largest companies involved in media buying for ad agencies and advertisers. Omnicom announced on December 9, 2024, that it had entered into an agreement to acquire IPG.³⁴ Skibinski Decl. ¶¶ 50-51. The companies negotiated with the FTC through the first half of 2025 to obtain approval of the merger.

On June 23, 2025, the FTC filed a *pro forma* complaint concerning the merger while simultaneously announcing that it had accepted a proposed consent order from the companies.³⁵ *Id.* ¶ 53. The proposed order did not require any divestiture or other structural changes for the new combined company, despite that it would be the world's largest advertising agency and media buying company. Rather, the draft order focused on precluding Omnicom or its agencies from doing business with any news rating service or entity that “[d]irects Advertisers’ advertising spend based on the Media Publisher’s political or ideological viewpoints, or the political or ideological viewpoints expressed in content that the Media Publisher sells advertising to run alongside of.”³⁶ *Id.* ¶ 54.

This condition in the proposed order was intended to target and debilitate if not eliminate news rating services, per Chairman Ferguson’s oft-stated views that such organizations were biased against conservative websites and publications. NewsGuard was at the top of the FTC’s and Ferguson’s hit list. When the proposed consent order was made public, Ferguson released a

³⁴ Press Release, Omnicom, Omnicom to Acquire Interpublic Group to Create Premier Marketing and Sales Company (Dec. 9, 2024), <https://www.omc.com/newsroom/omnicom-to-acquire-interpublic-group-to-create-premier-marketing-and-sales-company>.

³⁵ Press Release, Fed Trade Comm’n, FTC Prevents Anticompetitive Coordination in Global Advertising Merger (June 23, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/06/ftc-prevents-anticompetitive-coordination-global-advertising-merger>.

³⁶ Proposed Decision & Order, *Omnicom Grp. Inc.*, FTC File No. 251-0049, 2025 WL 2355514 (June 23, 2025).

statement specifically calling out NewsGuard as an organization that “ha[s] publicly sought to use the chokepoint of the advertising industry to effect political or ideological goals” and alleging that NewsGuard steers “advertising revenue with ‘an unavoidable partisan lens.’”³⁷ *Id.* ¶ 55 & Ex. 18. While none of this was true, it made clear that Chairman Ferguson’s and the FTC’s motivations in proposing and effecting the Omnicom merger conditions were entirely political and aimed squarely at censoring speech.

As discussed above, Newsmax had been a longtime critic of NewsGuard because Newsmax had received low reliability ratings, which it claimed demonstrated that NewsGuard was biased against conservative news sources generally. Following the FTC’s publication of the proposed order, Newsmax ran a series of stories contending it did not go far enough because, as written, it would not prohibit Omnicom from using NewsGuard’s rating services.³⁸ *Id.* ¶ 56. This was because, as Newsmax well knew, NewsGuard does not direct or recommend “advertising spend” based on “political or ideological viewpoints.” *Id.* NewsGuard’s ratings are strictly based on fully disclosed, nonpartisan standards for journalistic accuracy and veracity. *See id.* ¶ 5.

During the comment period for the proposed consent order, Newsmax filed a letter urging the FTC to expand the prohibitory condition to ensure Omnicom and its ad agencies “can no longer use biased rating organizations, fact checkers, and other third-parties to engage in censorship of

³⁷ Statement of Chairman Andrew N. Ferguson, *Omnicom Grp. Inc.*, FTC File No. 251-0049, at 5 & n.34 (June 23, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/omnicom-ipg-ferguson-statement_0.pdf.

³⁸ *See, e.g.*, Paul Bond, *Megamerger Omnicom, IPG Mum About NewsGuard Bias*, Newsmax (June 26, 2025, at 17:35 ET), <https://www.newsmax.com/us/news-bias-ftc-omnicom/2025/06/26/id/1216643>.

disfavored news outlets.”³⁹ *Id.* ¶ 58 & Ex. 20. Newsmax was not subtle about who it was targeting. Its fourteen-page letter mentioned NewsGuard more than a dozen times. On air and online, Newsmax commentators said the proposed order was inadequate because it “says nothing at all about stopping these agencies from using third-party ratings services like NewsGuard to block media like Newsmax.”⁴⁰ *Id.* ¶ 59 & Ex. 21.

Newsmax also took to the internet to lobby Chairman Ferguson, members of Congress, and the President. In posts on X directed to Chairman Ferguson, Newsmax asserted the FTC’s proposed order was insufficient because it “makes no mention of ‘censorship’ or ‘targeting conservatives’ and ‘[f]ully allows Omnicom to use left-wing NewsGuard.”⁴¹ *Id.* ¶ 60 & Ex. 22.

Conservative advocacy groups joined in with Newsmax, submitting a letter urging the FTC to impose a merger condition barring Omnicom from working with “ostensibly neutral third-party monitors such as NewsGuard,” which the groups claimed “in practice serve as gatekeepers that suppress conservative and heterodox content.”⁴² *Id.* ¶ 61. The groups submitting the letter did not mention, however, that they are supported by Newsmax and CPAC, the Conservative Political Action Committee (which is also supported by Newsmax).

³⁹ Newsmax Media Inc., Comment Letter on Proposed Consent Order 13 (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0008>.

⁴⁰ *Newsmax’s Tabacco Slams FTC Approval of Omnicom-IPG Merger*, Newsmax (Aug. 3, 2025, at 07:23 ET), <https://www.newsmax.com/newsfront/tabacco-ftc-omnicom/2025/08/02/id/1221045> (objecting that the draft order “says nothing at all about stopping these agencies from using third-party services like NewsGuard to block media like Newsmax”).

⁴¹ NEWSMAX (@NEWSMAX), X (July 31, 2025, at 21:58 ET), <https://x.com/NEWSMAX/status/1951100290775630054status/1951100290775630054>.

⁴² Indep. Media Council & CPAC Found. Ctr. for Regul. Freedom, Comment Letter on Proposed Consent Order 2 (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0010>.

Numerous First Amendment scholars and free speech organizations also submitted comments regarding the initial proposed order, explaining its unconstitutionality,⁴³ but the FTC made no mention of these comments and disregarded First Amendment concerns. *Id.* ¶ 62.

The FTC subsequently issued a revised order removing terms about using third-party services with “political or ideological bias,” which Newsmax had figured out would not cover NewsGuard. Instead, the FTC revised the Consent Order to prohibit the merged Omnicom entity or its ad agencies from using third-party services that evaluate “viewpoints as to the veracity of news reporting” and “adherence to journalistic standards or ethics.”⁴⁴ *Id.* ¶ 63 & Ex. 23.

There is no indication in the public record that Omnicom proposed or advocated for the censorial provision in the Consent Order aimed at precluding use of NewsGuard services and ratings. And it would be unusual, at the least, for an ad agency and marketing company to seek restrictions on use of services designed to protect advertisers’ reputations and brand safety. In sum, the FTC ordered that Omnicom and all its affiliates and ad agencies cannot contract with or use nonpartisan review and ratings services based on journalistic criteria.

There was no further comment period when NewsGuard could address or object to this revised language. The FTC adopted this as the final order on September 26, 2025. *Id.* ¶ 63 & Ex. 23.

⁴³ See, e.g., Pub. Knowledge, Comment Letter on Proposed Consent Order (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0013>; TechFreedom, Comment Letter on Proposed Consent Order (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0015>; Vikram David Amar & Ashutosh Bhagwat, Comment Letter on Proposed Consent Order (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0009>.

⁴⁴ Order, *Omnicom Grp. Inc.*, FTC Docket No. C-4823, ¶¶ 1.D, 2.A (Sept. 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/OmnicomOrder.pdf.

I. Harms to NewsGuard and Its Customers from the Consent Order.

The FTC's imposition of the Omnicom Consent Order has already had negative impacts on NewsGuard's business, and the harm in all likelihood will continue. For example, after the Consent Order was issued out, a longtime client that does significant business with Omnicom informed NewsGuard that it would not be renewing its contract, not because of any dissatisfaction with NewsGuard's service but because of "[r]ecent developments that require us to take a more cautious approach to this area of our business." *Id.* ¶ 66.

NewsGuard also stands to lose business from the newly merged Omnicom directly as a result of the Consent Order. Since 2019, NewsGuard has had a contract with IPG to make data available to brands represented by the agency that seek information about the reliability of different publishers. IPG has proudly touted this arrangement and data available through the agreement in press releases, industry event panels, and case studies. But it is questionable (or doubtful) that the agency will be able to continue with the contract now that it has been absorbed by Omnicom and is subject to the Consent Order. *Id.* ¶ 67.

The Omnicom Consent Order amounts to a government-imposed blacklist prohibiting Omnicom and its affiliates from using NewsGuard's services. Other agencies and companies seeking to use NewsGuard's ratings and services also face the prospect of FTC investigations, enforcement actions, and liability if they do not divorce themselves from dealings with NewsGuard. Overall, the burdens and restrictions imposed by the FTC through its onerous "investigation" and the prohibition of the Consent Order have made it nearly impossible for NewsGuard to conduct its journalism business. *Id.* ¶ 68.

STANDARD OF REVIEW

A plaintiff seeking preliminary relief must show: (1) likelihood of success on the merits; (2) likelihood of "suffer[ing] irreparable harm in the absence of preliminary relief;" (3) that "the

balance of equities tips in [their] favor;” and (4) that “an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The final two factors “merge when plaintiff attempts to preliminarily enjoin a government action,” *Fla. EB5 Invs., LLC v. Wolf*, 443 F. Supp. 3d 7, 13 (D.D.C. 2020), “because the government’s interest is the public interest.” *Pursuing Am. ’s Greatness v. Fed. Election Comm’n*, 831 F.3d 500, 511 (D.C. Cir. 2016).

ARGUMENT

I. NewsGuard Is Likely to Prevail on the Merits of Its Claims.

The common element in the FTC’s various actions against NewsGuard is disagreement with its journalistic judgements. The pretextual investigation of NewsGuard through an expansive and burdensome CID as well as the Omnicom merger condition—designed to starve NewsGuard of revenue—violate the First Amendment’s prohibition of retaliation against protected speech and its proscription against censorship through intermediaries. These actions violate both the First and Fourth Amendments to the United States Constitution.

A. Chairman Ferguson and the FTC Retaliated Against NewsGuard Because of its Editorial Judgments.

“[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions ... for speaking out.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006). *See also Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 474 (2022) (quoting *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019)); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (the government may not punish a person or deprive him of a benefit to limit “constitutionally protected speech”). This includes retaliation against journalistic activity. *Paxton*, 138 F.4th at 570. A government official engages in unconstitutional retaliation when (1) he targets activity protected by the First Amendment; (2) the adverse action is sufficient to deter a person of ordinary firmness from speaking again; and (3) there is a causal link between the exercise of the constitutional right and the official’s action.

Aref v. Lynch, 833 F.3d 242, 258 (D.C. Cir. 2016). The FTC’s actions targeting NewsGuard meet each of these conditions.

1. NewsGuard’s News Rating Service Is Protected Journalistic Activity.

The First Amendment protects journalistic judgment and editorial decisions. *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 254–56 (1974); *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). NewsGuard’s evaluation of news sites for accuracy and reliability is “quintessential First Amendment activit[y],” *Paxton*, 138 F.4th at 584, and in publishing its ratings NewsGuard is “obviously engaged in conduct protected under the First Amendment.” *Id.* NewsGuard’s rating system is akin to “a newspaper’s editorial section.” *Consortium for Indep. Journalism, Inc.*, 2025 WL 919504, at *18 n.11. Defendants have never questioned this fact, nor could they.

2. The FTC’s Campaign Against NewsGuard Is Sufficient to Deter Protected Activity.

Defendants’ adverse regulatory actions targeting NewsGuard include the FTC’s overly broad and punitive CID and the Omnicom-IPG Consent Order that operates as a blacklist against NewsGuard’s provision of brand safety services to the largest advertising agencies in the world. Compl. ¶¶ 107-135. The blunderbuss CID demands have devoured countless hours of NewsGuard staff and outside counsel time, forcing NewsGuard to divert revenue and resources away from its core journalistic mission. Compl. ¶¶ 136-39. The Consent Order foreclosing Omnicom from using NewsGuard’s service already has had a direct and substantial effect on NewsGuard, and further losses are imminent. Compl. ¶¶ 140-41; *see also* Skibinski Decl. ¶¶ 65-67.

These actions are sufficient to chill a reasonable publisher in NewsGuard’s position from engaging in protected expression. *See Aref*, 833 F.3d at 258. That is their point—the FTC’s campaign was designed to chill NewsGuard’s First Amendment-protected speech, journalism, and

editorial activities by intruding on NewsGuard’s operations and to violate NewsGuard’s First Amendment associational rights by disrupting its client relationships. Chairman Ferguson laid out his strategy for retaliation in official statements, interviews, and social media posts explaining how the FTC can use its investigative and coercive powers to force companies like NewsGuard to “knuckle under” and “[d]o what we say.” Skibinski Decl. ¶ 38.

As Chairman Ferguson foretold, the FTC’s campaign against NewsGuard has been costly and intrusive. The company has produced more than 40,000 pages of documents attempting to comply with the CID, as the FTC continually demanded more disclosures with no end in sight. The sweeping demands include virtually all documents, information, and records of NewsGuard from the company’s inception to the present, including those relating to NewsGuard’s analyses, methodology, editorial judgments, journalism and reporting. Compl. ¶¶ 83-89, 95-99; *see also* Skibinski Decl. ¶ 40. And the demands did not stop with probing NewsGuard’s editorial processes and business practices. The FTC also sought information on NewsGuard’s customers and subscribers, demanding disclosure of all communications with them. Compl. ¶¶ 99-102. NewsGuard’s legal expenses alone have exceeded 30 percent of the revenue derived from the brand-safety services the company provides to clients, but that does not account for other costs including lost productivity and business opportunities. Compl. ¶ 104.

It is “not a high” bar to show that such burdens would deter a person of reasonable firmness from engaging in protected activity, *Jenner & Block LLP v. U.S. Dep’t of Just.*, 784 F. Supp. 3d 76, 95 n.7 (D.D.C. 2025), *appeal docketed*, No. 25-5265 (D.C. Cir. July 22, 2025), and it is of no moment that NewsGuard has refused to “knuckle under.” *See Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005) (“We have never held that a plaintiff must prove that the allegedly retaliatory conduct caused her to cease First Amendment activity

altogether.”). It is sufficient to show that the FTC’s CID would chill certain First Amendment activities of similarly situated individuals and organizations of ordinary firmness. *Id.*; *see also White v. Lee*, 227 F.3d 1214, 1228–29 (9th Cir. 2000) (explaining that an investigation involving “the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation” “more than meets th[e] standard” of an action that “would chill or silence a person of ordinary firmness from future First Amendment activities”); *Cooksey v. Futrell*, 721 F.3d 226, 236–37 (4th Cir. 2013) (same).

That showing is easily met here, as confirmed by the number of courts that have found similar (and in some cases, identical) tactics constitute retaliatory investigations sufficient to intimidate speakers into silence. *See, e.g., Media Matters for Am. v. FTC*, 2025 WL 2378009, at *2 (“There can be no doubt that such a CID would deter a reporter of ordinary firmness from speaking again.”), *Paxton*, 732 F. Supp. 3d at 28 (“[T]he threat of administrative and judicial intrusion into newsgathering and editorial process that arises from official process and its possible enforcement” “is sufficient to deter protected speech.” (quotation marks omitted)); *Bailey*, 2024 WL 3924573, at *11 (“Paxton’s announcement of an investigation and issuance of a CID demanding records relating to Media Matters’ organization, funding, and journalism would sufficiently deter a news organization or journalist ‘of ordinary firmness’ from speaking again.”).

But the FTC’s campaign against NewsGuard goes even further than just an investigation and includes the Omnicom-IPG merger condition that bars Omnicom and its affiliates and ad agencies from contracting with or using nonpartisan news website review and ratings services based on journalistic criteria. Skibinski Decl. ¶ 63. Not only does this condition prohibit the Omnicom entities from using NewsGuard’s services, other agencies and companies seeking to use NewsGuard’s ratings and services also face the prospect of FTC investigations, enforcement

actions, and liability if they do not divorce themselves from dealings with NewsGuard. The direct censorship and widespread chilling effects of this condition are obvious.

3. The FTC’s Retaliatory Campaign Directly Targets NewsGuard Because of Its News Judgments.

There is a direct causal link between NewsGuard’s journalism and Defendants’ retaliatory acts. By both word and deed, Chairman Ferguson and the FTC have left no doubt they are targeting NewsGuard because they disagree with its editorial judgments. But NewsGuard need not present “direct evidence” of retaliatory motive⁴⁵ even though it exists here in abundance. Courts review various factors to assess causation, including suspicious timing of the government’s actions, *Johnson v. District of Columbia*, 726 F. Supp. 3d 8, 30 (D.D.C. 2024), and its pretextual explanations for targeting speech. *Goodwin*, 579 F. Supp. 3d at 175. And courts will consider whether the alleged retaliation is part of a broader “campaign” targeting the plaintiff. *Lewis v. Gov’t of D.C.*, 161 F. Supp. 3d 15, 29 (D.D.C. 2015). Taken together, a combination of adverse actions and statements by officials is sufficient to demonstrate retaliatory motive. *E.g.*, *Am. Acad. of Pediatrics v. U.S. Dep’t of Health & Hum. Servs.*, No. 25-cv-4505, 2026 WL 80796, at *16-20 (D.D.C. Jan. 11, 2026). In this case, all relevant factors confirm Defendants’ retaliatory purpose. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

⁴⁵ Plaintiffs “are not required to come forward with ... ‘the so-called smoking gun,’” *Massey v. Johnson*, 457 F.3d 711, 717 (7th Cir. 2006) (quoting *Lewis v. City of Boston*, 321 F.3d 207, 219 (1st Cir. 2003)), which courts recognize is “rarely available” to prove something so “protean ... as an actor’s motive or intent,” *Grajales v. P.R. Ports Auth.*, 682 F.3d 40, 49 (1st Cir. 2012). While the government’s statements about its own motivation provide important (and sometimes dispositive) context, *see Hawkins v. District of Columbia*, 923 F. Supp. 2d 128, 143 (D.D.C. 2013), “direct evidence of retaliatory animus is not required,” *Goodwin v. Dist. of Columbia*, 579 F. Supp. 3d 159, 174 (D.D.C. 2022) (quoting *Black Lives Matter D.C. v. Trump*, 544 F. Supp. 3d 15, 46-47 (D.D.C. 2021)).

First, this case is particularly notable because Chairman Ferguson publicly explained not just *why* he was targeting NewsGuard, but also *how* he planned to bring the company to heel. Even before he was elevated to the chairmanship, then-Commissioner Ferguson referred to NewsGuard in November 2024 post on X and asserted it had supposedly “led collusive ad-boycotts—possibly in violation of our antitrust laws—to censor the speech of conservative and independent media in the United States.”⁴⁶ The following month, Ferguson suggested the FTC “ought to conduct ... an investigation,” incorrectly claiming that NewsGuard “seems to give a free pass to ... major left-leaning outlets.”⁴⁷ After becoming Chairman, Ferguson explained in an April 2025 interview exactly how the FTC could use its “tremendous array of investigative tools” and “coercive power—formal and informal” to demand compliance with its views about supposed online “censorship,” and he laid out a roadmap of the tactics his FTC would ultimately use against NewsGuard.⁴⁸ Such statements were a prologue to, and an explanation for, the actions the FTC would take against NewsGuard.

Under these circumstances, “[a] reasonable factfinder is likely to interpret Defendants’ words as targeting [the plaintiff] not for legitimate law enforcement purposes but instead for its protected First Amendment activities.” *Bailey*, 2024 WL 3924573, at *15; *see also id.* at *14 (“Defendant’s public statements are direct evidence of retaliatory intent.”); *Media Matters v. FTC*, 2025 WL 2378009, at *19–20 (“Chairman Ferguson and his colleagues have made comments characterizing [the plaintiff] and this investigative push ‘in ideological terms.’”); *Paxton*, 732 F. Supp. 3d at 28 (“Defendant’s description of [plaintiff] as a ‘radical anti-free speech’ and ‘radical

⁴⁶ Andrew Ferguson (@AFergusonFTC), *supra* note 14.

⁴⁷ Concurring Statement of Commissioner Andrew Ferguson, *supra* note 20.

⁴⁸ *Transcript: FTC Chairman Andrew Ferguson Keynote Part II*, *supra* note 24.

left-wing organization ... is evidence of retaliatory intent.”). Chairman Ferguson’s numerous statements focusing on NewsGuard make clear that “retaliatory animus was the but-for cause of the FTC’s CID.” *Media Matters v. FTC*, 2025 WL 2378009, at *2.

Second, the timing and sequence of the FTC’s actions targeting NewsGuard support a finding of retaliatory purpose. It is reasonable to infer retaliation where a defendant’s actions are part of a broader “campaign” targeting the plaintiff, *Lewis*, 161 F. Supp. 3d at 29, as it is here. Chairman Ferguson publicly campaigned for his current position by pledging to crack down on services like NewsGuard (which he specifically named). Compl. ¶¶ 56, 71. Almost immediately after he assumed the chairmanship of the agency, the FTC issued a Request for Information (“RFI”) seeking public comment on “Technology Platform Censorship,” asserting that social media providers and other “tech platforms” are engaged in “censorship” that is “potentially illegal.”⁴⁹ This mirrored a series of actions by state governments, purporting to take aim at the so-called “censorship industrial complex.” Compl. ¶¶ 66-82. Despite the fact that the state investigations were enjoined as retaliatory (as the FTC’s investigation of *Media Matters* would be), the agency issued its own expansive CID probing every aspect of NewsGuard’s business, followed shortly thereafter by the Omnicom merger condition suppressing NewsGuard. Compl. ¶¶ 83-135. Under these circumstances, a court need not suspend disbelief in analyzing causation—where common sense “suggests that there may be more to this story.” *Smith v. De Novo Legal, LLC*, 905 F. Supp. 2d 99, 104 (D.D.C. 2012).

Third, the sweeping scope of the CID and the restriction in the Omnicom merger condition targeting services that evaluate “viewpoints as to the veracity of news reporting” and “adherence

⁴⁹ Press Release, *supra* note 23; see Request for Public Comment Regarding Technology Platform Censorship, *supra* note 23.

to journalistic standards or ethics” confirm the causal link to NewsGuard’s protected speech. *See Media Matters v. FTC*, 2025 WL 2378009, at *21. The CID requires production of “all documents relating to NewsGuard’s News Reliability Ratings and any other rating[s];” identification of all NewsGuard customers; and essentially all communications from or to NewsGuard. Skibinski Decl. ¶ 40 & Ex. 15. It effectively demands production of virtually all NewsGuard documents, including those relating to NewsGuard’s analyses, editorial judgments, customers, and journalism. *Id.* This includes all materials about NewsGuard’s work product and methodology. And it necessarily includes production of information, materials, and communications relating to NewsGuard’s journalism and reporting, including reporters’ notes and sources. *See id.*, Specification 5.

The CID Specifications regarding NewsGuard’s finances are likewise overbroad and intrusive, calling for production of every financial statement, budget, profit and loss statement, cost center report, profitability report, and any other financial report prepared by or for NewsGuard. *Id.* And its demands for customer lists and correspondence raise special concerns regarding rights of free speech and association. *Id.* And, as noted, contrary to requirements under the FTC Act, the Commission gave no explanation in the CID (or since) of any alleged violation that is the subject of investigation and the provision of law applicable to such violation, it failed to do so in the NewsGuard CID, leaving the company to guess about how the agency’s demands relate to any legitimate enforcement of antitrust or competition laws. Its failure to provide any legitimate rationale, coupled with “the sweeping scope of the FTC’s CID ... suggests pretext on the part of the FTC.” *Media Matters v. FTC*, 2025 WL 2378009, at *21.

The terms of the Omnicom Consent Order likewise reflect retaliatory intent. When the Consent Order was first proposed, Chairman Ferguson released a statement explicitly calling out NewsGuard as an organization that “ha[s] publicly sought to use the chokepoint of the advertising

industry to effect political or ideological goals” and alleging that NewsGuard steers “advertising revenue with ‘an unavoidable partisan lens.’” Skibinski Decl. ¶ 55 & Ex. 18. In line with this distorted characterization of NewsGuard, the Consent Order as originally proposed would have barred Omnicom or its agencies from doing business with any news rating service or entity that “[d]irects Advertisers’ advertising spend based on the Media Publisher’s political or ideological viewpoints, or the political or ideological viewpoints expressed in content that the Media Publisher sells advertising to run alongside of.” Skibinski Decl. ¶ 54 & Ex. 17 (quoting Proposed Decision & Order, *Omnicom Grp. Inc.*, FTC File No. 251-0049, 2025 WL 2355514 (June 23, 2025)).

Ironically, Newsmax objected to this formulation, telling the Commission that the condition as proposed would not reach NewsGuard, thus undermining its claims (and those of Chairman Ferguson) that NewsGuard was ideologically biased against conservatives. In response, and at the urging of Newsmax, FTC revised the Consent Order to prohibit the merged Omnicom entity or its affiliates from using third-party services that evaluate “viewpoints as to the veracity of news reporting” and “adherence to journalistic standards or ethics.”⁵⁰ As modified, the condition targets NewsGuard “with the precision of a laser beam,” *News Am. Publ’g, Inc. v. FCC*, 844 F.2d 800, 814 (D.C. Cir. 1988), and confirms the causal link between the FTC’s actions and NewsGuard’s journalism.

B. The FTC’s Intermediary Strategy Reflected in the Omnicom-IPG Consent Order Is Unconstitutional Jawboning.

Whether or not the FTC’s actions might be classified as retaliation, its use of the Omnicom-IPG Consent Order to target NewsGuard violates another First Amendment rule that the Supreme Court recently reaffirmed unanimously: A government official cannot do indirectly what he or she

⁵⁰ Order, *Omnicom Grp. Inc.*, FTC Docket No. C-4823, ¶¶ 1.D, 2.A (Sept. 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/OmnicomOrder.pdf.

is barred from doing directly. *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 190 (2024); see *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963). Specifically, “[a] government official cannot coerce a private party to punish or suppress disfavored speech on her behalf.” *Vullo*, 602 U.S. at 190 (citing *Bantam Books*, 372 U.S. at 67–69).

No doubt, government officials may criticize private speakers (as Chairman Ferguson has done) and in doing so can “rely on the merits and force of [their] ideas, the strength of [their] convictions, and [their] ability to inspire others.” *Id.* at 188. But the *Vullo* Court drew the constitutional line there; officials cannot “use the power of the State to punish or suppress disfavored expression.” *Id.* A public official who tries to shut down an avenue of expression of ideas and opinions through “actual or threatened imposition of government power or sanction” violates the First Amendment. *Backpage.com, LLC v. Dart*, 807 F.3d 229, 230 (7th Cir. 2015) (quoting *Am. Family Ass’n, Inc. v. City & County of San Francisco*, 277 F.3d 1114, 1125 (9th Cir. 2002)).

This means the First Amendment bars the government from penalizing speech indirectly by applying regulatory pressure on third-party intermediaries. For example, in *Bantam Books* the Supreme Court held the government could not apply pressure on third-party booksellers in order to impose a blacklist on publications. 372 U.S. at 71. And in *Backpage.com*, the Seventh Circuit enjoined a sheriff and held that he had violated the First Amendment by pressuring credit card companies to stop doing business with a classified advertising website because he objected to the content of ads on the site. 807 F.3d at 235.

The Supreme Court’s unanimous reaffirmation of this principle in *Vullo* is directly on point. The Court held the New York Department of Financial Services (“DFS”) could not leverage its regulatory authority over insurance companies to penalize the National Rifle Association for its

political positions on gun control. State officials advised the regulated insurance companies that doing business with the NRA sent the wrong message and entered agreements with companies that “agreed not to provide any NRA-endorsed insurance programs.” *Vullo*, 602 U.S. at 184-85. Of particular relevance here, the Court held it offends the First Amendment for regulators to enter consent decrees granting concessions to regulated insurance companies on condition they cease doing business with a disfavored speaker. *Id.* at 198. Yet this is precisely what the FTC has done in this case.

The revised merger condition puts NewsGuard on a government-imposed blacklist. It prohibits Omnicom and its ad agencies and affiliates—now the world’s largest ad agency—from using NewsGuard’s services. And other agencies and companies seeking to use NewsGuard’s ratings and services also face the prospect of FTC investigations, enforcement actions, and liability if they continue to use NewsGuard’s services. As a consequence, NewsGuard has already lost business as a direct result of the condition and will lose more unless enforcement of the merger condition is enjoined. *See Skibinski Decl.* ¶¶ 65-67.

The FTC Consent Order violates the First Amendment for the same reason as the publication blacklist in *Bantam Books*, the pressure campaign on credit card companies in *Backpage.com*, and the consent decree conditions barring business relationships with the NRA in *Vullo*. Judge Richard Posner aptly described such an intermediary strategy designed to deprive a media company of revenues as akin to “killing a person by cutting off his oxygen supply rather than by shooting him.” *Backpage.com*, 807 F.3d at 231. Accordingly, he found the “only remedy is an injunction against the [government’s] violating [the company’s] First Amendment rights,” which the Seventh Circuit immediately ordered. *Id.* at 238–39. This Court should do the same and enjoin the FTC from enforcing the Omnicom merger condition.

C. The FTC’s Actions Against NewsGuard Violate the First and Fourth Amendments.

The FTC’s campaign against NewsGuard violates NewsGuard’s First and Fourth Amendment rights. Chairman Ferguson’s oft-stated position that he is taking action against NewsGuard to combat what he calls “Big Tech censorship” misunderstands basic constitutional law. The most fundamental rule of the First Amendment is that the Free Speech Clause protects private actors against the government. *Manhattan Cmty. Access Corp.*, 587 U.S. at 804. In our constitutional scheme the government has no legitimate role in deciding “what counts as the right balance of private expression” or to “‘un-bias’ what it thinks [is] biased.” *Moody*, 603 U.S. at 719.

Although Chairman Ferguson attempts to clothe himself as a free speech warrior, “[o]n the spectrum of dangers to free expression, there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana.” *Id.* at 741–42. The Supreme Court has made clear that the First Amendment fully protects editorial decisions by publications, websites, and platforms, *id.* at 734, 741–42, and Chairman Ferguson’s claim that he is taking action against news ratings services based on his belief (mistaken or not) that they are biased against conservative news sites gives away the game.

The FTC’s jurisdiction over unfair competition in commerce and agreements that unreasonably restrain trade, 15 U.S.C. §§ 1, 45, does not empower it to serve as a referee of journalistic judgments. The Commission simply has no legitimate role to play that would permit it to intervene in the market for advertiser brand safety tools where NewsGuard’s position is *de minimis*—less than 0.1%—of that market. Yet even if the FTC had some colorable regulatory hook on which to hang its claim of authority, it would not be able to avoid the inevitable First Amendment conflict. *See NAACP. v. Claiborne Hardware Co.*, 458 U.S. 886, 911 (1982).

Here, the FTC's CID violates the First Amendment not only because it is retaliatory and burdensome, but also because it is an exercise in viewpoint discrimination, as Chairman Ferguson proudly admits. "Viewpoint discrimination is poison to a free society," *Iancu v. Brunetti*, 588 U.S. 388, 399 (2019) (Alito, J., concurring), and the government lacks any legitimate interest in selectively penalizing disfavored viewpoints. *Healy v. James*, 408 U.S. 169, 187–88 (1972). It is "an egregious form of content discrimination" and is essentially unconstitutional *per se*, *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829-30 (1995), yet it is the driver of all of the FTC's actions against NewsGuard.

The sweeping CID demands infringe both NewsGuard's First and Fourth Amendment rights. *See Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208–11 (1946). In particular, the First Amendment affords NewsGuard a privilege that protects it from having to disclose information if doing so would chill its constitutional rights of free speech and free expression. *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2009). These constitutional protections are interrelated; when an administrative subpoena seeks materials that could fall under First Amendment protection, courts require that the Fourth Amendment's standards be met with "scrupulous exactitude." *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) (citing *Stanford v. Texas*, 379 U.S. 476, 485 (1965)).

First Amendment case law makes clear that "before a state or federal body can compel disclosure of information which would trespass upon [F]irst [A]mendment freedoms, a 'subordinating interest of the State' must be proffered, and it must be 'compelling.'" *Fed. Election Comm'n v. Machinists Non-Partisan Pol. League*, 655 F.2d 380, 389 (D.C. Cir. 1981) (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 463 (1958)). And, in particular, investigating a news organization because the government views its editorial policies as biased is not a valid

governmental interest. “It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press.” *Sweezy v. New Hampshire ex rel. Wyman*, 354 U.S. 234, 245 (1957).

But the FTC has flouted those requirements here, and its investigation of NewsGuard is a classic fishing expedition. The CID did not “state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation” as required by 15 U.S.C. § 57b-1(c)(2). Instead, the CID simply provided a boilerplate statement that it was seeking information “to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission.” Nevertheless, the CID demands that NewsGuard produce vast numbers of confidential, highly sensitive documents, a request that effectively encompasses virtually all the company’s emails, reporters’ notes and drafts, texts, and other documents created since its founding. The CID also demands the identities of NewsGuard’s subscribers and all communications with them.

This blunderbuss approach not only tramples NewsGuard’s editorial rights, the demand for customers’ identities and forced disclosure of all communications intrudes on associational rights as well. *See Patterson*, 357 U.S. at 460 (“It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.”). Because “compulsory disclosure of organizational ties can constitute a significant encroachment on freedom of association,” *Familias Unidas v. Briscoe*, 619 F.2d 391, 399 (5th Cir. 1980), it can be justified only if narrowly tailored to further a sufficiently important government interest, *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 609–10 (2021). The FTC’s open-ended demand for

customer identities untethered to any legitimate investigatory interest cannot satisfy exacting scrutiny. A government actor’s “intentional service of [a] CID” can be “the act that caused chilling effects” on a media organization’s First Amendment rights, as serving a CID “legally obligate[s]” the organization “to produce records.” *Paxton*, 732 F. Supp. 3d at 20, 22.

II. NewsGuard Will Suffer Irreparable Harm Absent an Injunction.

The CID and the Omnicom Consent Decree have caused—and are causing—NewsGuard ongoing irreparable constitutional injury, economic loss, and associational harm. These injuries easily satisfy the requirements for emergency relief: irreparable harm that is “certain and great, . . . actual . . . not theoretical,” and “of such imminence that there is a ‘clear and present’ need for equitable relief.” *Wis. Gas Co. v. Fed. Energy Regul. Comm’n*, 758 F.2d 669, 674 (D.C. Cir. 1985) (quoting *Ashland Oil, Inc. v. Fed. Trade Comm’n*, 409 F. Supp. 297, 307 (D.D.C.), *aff’d*, 548 F.2d 977 (D.C. Cir. 1976)).

The Supreme Court has repeatedly held “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.); *see also Cigar Ass’n of Am. v. U.S. Fed. Drug Admin.*, 317 F. Supp. 3d 555, 562 (D.D.C. 2018); *Bailey v. Fed. Bureau of Prisons*, No. 24-1219, 2024 WL 3219207, at *9 (D.D.C. June 28, 2024) (noting plaintiff can establish irreparable harm can be established by showing that “First Amendment freedoms are actually” or “imminently will be” lost). As in *Paxton*, where the D.C. Circuit held this Court properly concluded the Texas AG’s “campaign of retaliation” led to “self-censorship,” such an injury constitutes “irreparable harm.” 138 F.4th at 570. And this Court enjoined the FTC’s retaliatory CID issued to Media Matters, finding the irreparable injury requirement “is easily met” for the same reasons. *Media Matters v. FTC*, 2025 WL 2378009, at *22. With such constitutional injuries, “there is a ‘presumed

availability of federal equitable relief.” *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998) (citation omitted); *see Kareem v. Trump*, 960 F.3d 656, 667 (D.C. Cir. 2020).

Here, NewsGuard has alleged “present, concrete, and objective harms” that currently “adversely affect[] [its] newsgathering activities and media business operations.” *Paxton*, 138 F.4th at 579. It has been burdened with voluminous and intrusive document demands that have imposed significant costs and diverted the company from its mission. Skibinski Decl. ¶ 49. It has been threatened with disclosure of sensitive editorial materials as well as customer identities and communications. *Id.* ¶¶ 40-41. And it has been barred from future contracts with the largest international advertising agency. *Id.* ¶¶ 63-64. The irreparable harm is obvious, ongoing, and imminent.

III. The Remaining Equitable Factors Favor Granting Preliminary Relief.

The remaining equitable factors—the balance of equities and the public interest—strongly favor NewsGuard. “It is well settled that the balance of equities and public interest factors merge if the government is the opposing party.” *Paxton*, 138 F.4th at 585. “In other words, ‘[w]hen a private party seeks injunctive relief against the government,’” the Court “must ‘weigh[] the benefits to the private party from obtaining an injunction against the harms to the government and the public from being enjoined.’” *Id.* (quoting *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 734 (D.C. Cir. 2022)).

Both “factors [are] established when there is a likely First Amendment violation.” *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 191 (4th Cir. 2013) (quoting *Centro Tepeyac v. Montgomery County*, 779 F. Supp. 2d 456, 471 (D. Md. 2011)); *see Kareem*, 960 F.3d at 668 (“[E]nforcement of an unconstitutional law is always contrary to the public interest.”) (quoting *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013)). “The public’s

interest in protecting First Amendment rights” is beyond dispute and allowing unconstitutional government action to stand “is always contrary to the public interest.” *Pursuing Am.’s Greatness*, 831 F.3d at 511-12 (quoting *Gordon*, 721 F.3d at 653). The balance of equities also favors injunctive relief because “no substantial harm to others can be said to inhere” in allowing a violation of constitutional rights to continue. *Déjà vu of Nashville, Inc. v. Metro. Gov’t of Nash. & Davidson Cty.*, 274 F.3d 377, 400 (6th Cir. 2001).

Granting preliminary relief will not harm the government. Because the FTC’s investigation and the Consent Order condition are devoid of any legitimate basis, Defendants lack a legitimate interest continuing their pursuit of NewsGuard. Defendants “cannot legitimately claim to be ‘harmed’ as a result of being restrained from illegal conduct.” *Prysmian Cables & Sys. USA, LLC v. Szymanski*, 573 F. Supp. 3d 1021, 1044 (D.S.C. 2021) (collecting cases). “If anything, the system is improved by such an injunction.” *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (quoting *Giovani Carandola, Ltd. v. Bason*, 147 F. Supp. 2d 383, 395 (M.D.N.C. 2001)); *see also League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (holding there is “substantial public interest” in ensuring the government “abide[s]” by the law (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994))). The strong public interest in assuring that journalists can report on important matters unencumbered by political pressure requires entry of a preliminary injunction.

CONCLUSION

For the reasons set forth above, the Court should grant NewsGuard’s motion for a preliminary injunction.

Dated: February 11, 2026

Respectfully Submitted,

/s/ Robert Corn-Revere

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2026, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing upon all ECF filing participants.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 11, 2026.

Dated: February 11, 2026

Respectfully submitted,

By: /s/ Robert Corn-Revere

Robert Corn-Revere

CERTIFICATE OF COMPLIANCE

1. This document complies with the page limit of Local Rule LCvR 7(e) because this document does not exceed 45 pages.
2. This document has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Times New Roman.

Dated: February 11, 2026

Respectfully submitted,

By: /s/ Robert Corn-Revere

Robert Corn-Revere

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NEWSGUARD TECHNOLOGIES, INC.,

Plaintiff,

v.

FEDERAL TRADE COMMISSION and
ANDREW FERGUSON, in his official
capacity as Chairman of the Federal Trade
Commission,

Defendants.

Civil Action No. 1:26-cv-00353-DLF

**DECLARATION OF MATTHEW SKIBINSKI IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

I, Matthew Skibinski, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I submit this declaration in support of Plaintiff's Motion for Preliminary Injunction. I am over the age of 18, am competent to testify, and have personal knowledge of the facts and information set forth in this declaration.

2. I am the Chief Operating Officer of NewsGuard Technologies, Inc. ("NewsGuard"). I am a member of NewsGuard's founding team. In my role as Chief Operating Officer, I help lead NewsGuard's operations and strategy.

3. NewsGuard was founded by veteran journalists and media executives Gordon Crovitz and Steven Brill. Mr. Brill previously established *The American Lawyer*, Court TV, the Yale Journalism Initiative, and the Clear Registered Traveler program. Mr. Crovitz spent over 35 years at *The Wall Street Journal* as publisher, and as an editorial writer and opinion columnist.

4. NewsGuard launched in 2018 with the aim of providing news consumers and companies that interact with online news content with transparent, detailed assessments of the reliability of news sources they might encounter on the Internet. NewsGuard's guiding principle has been that no government entity should be in the business of deciding what news people consume, but neither should those decisions be left to unknown and unaccountable algorithms or partisan advocacy groups.

5. NewsGuard developed a methodology to assess and report on indices of reliability for news sources based on nine basic criteria of journalistic practice: (1) whether a publication repeatedly publishes demonstrably false information; (2) whether it presents information responsibly, for example, by referencing multiple sources including those with first-hand information on a subject or event; (3) whether the site transparently acknowledges errors and regularly publishes clarifications and corrections; (4) whether a source distinguishes between news and opinion; (5) whether it publishes significantly sensationalized or otherwise deceptive headlines; (6) whether the site discloses in a user-friendly manner its ownership and/or financing; (7) whether paid advertising is clearly labeled as such; (8) whether readers are told who is in charge of deciding the content on the site and given a way to contact the site about editorial issues; and (9) whether the names and contact information or biographical information about the content creators are clearly indicated. These criteria are based on widely accepted journalistic standards and are posted publicly on NewsGuard's website with detailed definitions for each. *See Website Rating Process and Criteria*, NewsGuard, <https://www.newsguardtech.com/ratings/rating-process-criteria>.

6. Each of the nine criteria is assigned a weighted number of points, which can total to a maximum of 100 points. Each site is assigned an overall score of 0 to 100 and a rating indicating the extent to which it adheres to the criteria in NewsGuard’s judgment.

7. NewsGuard employs a team of journalists and editors to research each site, contact sources, review content, and assess whether the site passes or fails each of the nine criteria. These findings are captured in a detailed journalistic report about the site’s rating, which we call a “Nutrition Label.”

8. NewsGuard also provides a “Nutrition Label” accompanying each website’s listed score, which sets forth in detail NewsGuard’s findings and ultimate determination. Nutrition Labels include a grid showing NewsGuard’s judgment of the site’s performance on each of the nine criteria, as well as a description of the content on the site, who is behind it, and why it received the score it did. Nutrition Labels ordinarily run to 4,000-10,000 words and are painstakingly prepared and reviewed by journalist analysts and NewsGuard executives. Attached hereto as **Exhibit 1** and **Exhibit 2** are examples of the full Nutrition Labels for *The Wall Street Journal* and Newsmax, respectively.

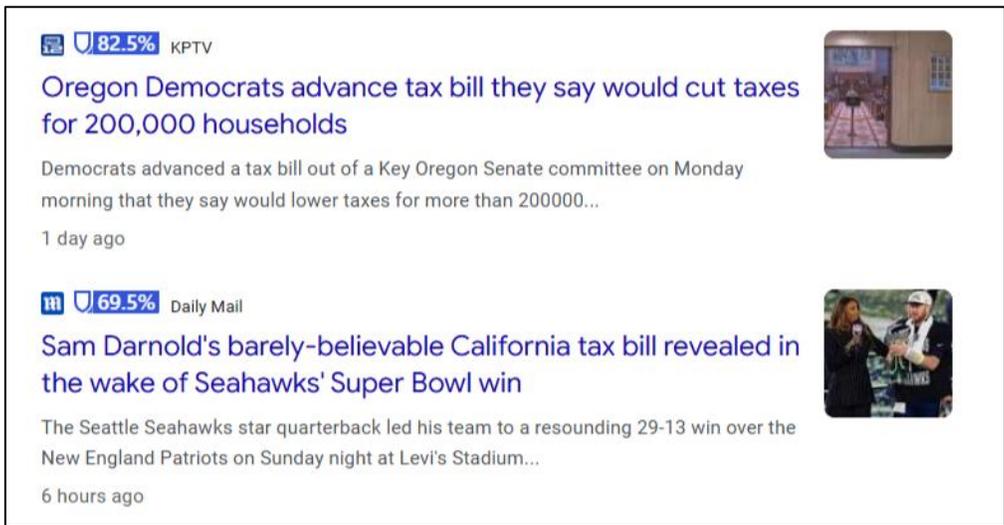
9. Nutrition Labels are reviewed, edited, and fact-checked by multiple editors. Before being published, each Nutrition Label is shared with the full staff of analysts and executives, who each sign off on the rating before it is published. Once the Nutrition Label is published, all of the details—including how determinations were made, how each criterion is defined, and what evidence supports each criterion determination—are shared with the publisher, and all of this plus any comments from the publication are made available to NewsGuard’s subscribers. The entire rating process and rationales for ratings are thus completely transparent.

10. NewsGuard has rated 38,742 news sources, including 12,765 websites, since its founding.

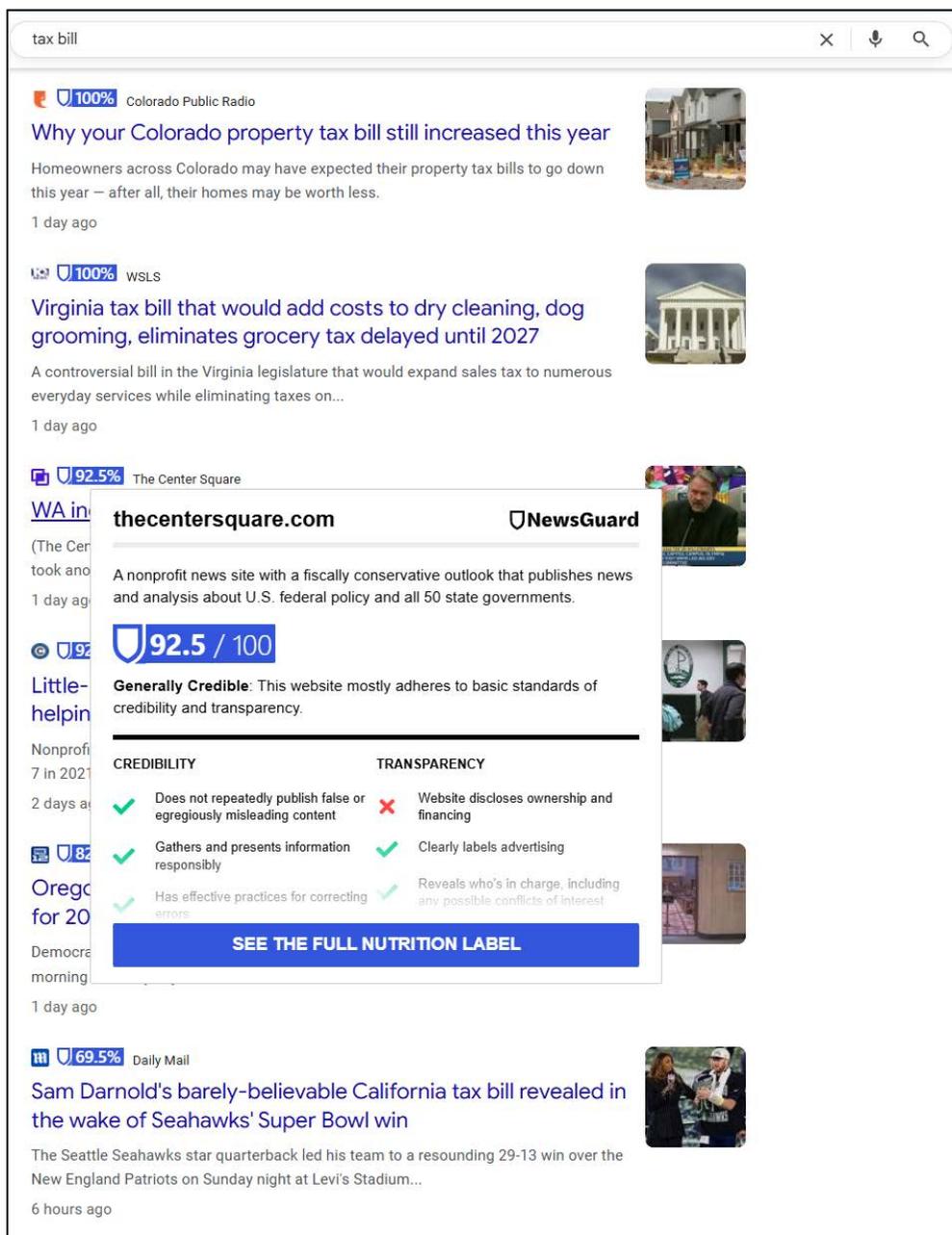
NewsGuard's Services to Customers

11. NewsGuard's services are available to consumers, businesses, advertisers, and others. Consumers can access NewsGuard reliability ratings through a monthly online subscription, which also gives them access to public reports the company produces.

12. The subscription provides a browser extension that allows individuals using the Internet to see NewsGuard trust score icons next to links in their search results and social media feeds:



13. Hovering over an icon brings up a short description of the site and a link to “See the Full Nutrition Label” for a detailed description and why it received the score it did:



14. NewsGuard also licenses its ratings to businesses that seek data to help them understand the reliability of different online content—for example, news aggregators and public

relations companies whose businesses rely on understanding how reliable different content online might be.

15. Advertisers and ad agencies also use NewsGuard’s ratings to help make informed decisions about where (on which websites) ads should and should not be placed.

16. Online ads predominantly are placed through programmatic advertising campaigns, *i.e.*, automated software-based buying and selling of digital ad placements. An average programmatic ad campaign runs on 44,000 websites at one time.¹ Major brands advertising online cannot know all of the tens of thousands of websites where their ads might appear. So, advertisers rely on ad agencies and automated services to provide methods to identify websites with high quality content that are suitable for ad placements and to avoid ad placements that may be “brand unsafe,” meaning ones that could undermine their brands in the eyes of consumers.

17. Brand safety for online advertisers has become a multi-billion-dollar industry. This is because, through programmatic ad campaigns, major international brands have had their advertisements unintentionally placed on websites considered unsafe and brand-damaging.

18. NewsGuard has reported on these concerns, identifying ads inadvertently placed on websites advancing dangerous health treatments,² promoting election misinformation,³ making

¹ See Press Release, Ass’n of Nat’l Advertisers, ANA Provides “First Look” at In-Depth Programmatic Transparency Study (June 19, 2023), <https://www.ana.net/content/show/id/pr-2023-06-programmaticstudy>.

² Matt Skibinski, *Thousands of the World’s Most Trusted Brands Funded COVID-19 Misinformation*, NewsGuard, <https://www.newsguardtech.com/special-report-advertising-on-covid-19-misinformation> (last viewed Feb. 11, 2026).

³ Matt Skibinski, *Special Report: How Some of the World’s Largest Brands Funded the Misinformation Behind the Capitol Riot*, NewsGuard (Jan. 12, 2021),

false claims about the Israel-Hamas conflict,⁴ or spreading Russian propaganda.⁵ For example, NewsGuard reported that in 2019 Berkshire Hathaway's subsidiary GEICO was unintentionally the largest advertiser on Sputnik News, a Kremlin-controlled website.⁶

19. Research studies by NewsGuard and others estimate that 67% of top brands inadvertently advertise on websites with this kind of problematic content,⁷ totaling some \$2.6 billion of advertising per year.⁸

20. NewsGuard's customers in the advertising industry include ad agencies, ad targeting platforms, and advertisers themselves. Their continuing loyalty over the years shows that they value NewsGuard's ratings, analyses, and journalism. However, in this area NewsGuard is a

<https://www.newsguardtech.com/special-reports/special-report-advertising-on-election-misinformation>.

⁴ *Brand Danger: NewsGuard Finds 349 Top Global Brands Funding Misinformation About the Hamas-Israel Conflict with Programmatic Ads*, NewsGuard (Nov. 29, 2023), <https://www.newsguardtech.com/press/brand-danger-newsguard-finds-349-top-global-brands-funding-misinformation-about-the-hamas-israel-conflict-with-programmatic-ads>.

⁵ *One Year, 100 Myths: NewsGuard Has Identified More Than 100 False Narratives About the War in Ukraine*, NewsGuard (Feb. 16, 2023), <https://www.newsguardtech.com/press/one-year-100-myths-newsguard-has-identified-more-than-100-false-narratives-about-the-war-in-ukraine>.

⁶ L. Gordon Crovitz, *How Amazon, Geico and Walmart Fund Propaganda*, N.Y. Times (Jan. 21, 2020), <https://www.nytimes.com/2020/01/21/opinion/fake-news-russia-ads.html>.

⁷ Wajeeha Ahmad et al., *Companies Inadvertently Fund Online Misinformation Despite Consumer Backlash*, 630 NATURE 123, 124 (2024).

⁸ Matt Skibinski, *Special Report: Top Brands Are Spending \$2.6 Billion to Misinformation Websites Each Year*, NewsGuard <https://www.newsguardtech.com/special-reports/brands-send-billions-to-misinformation-websites-newsguard-comscore-report>.

small player compared to large incumbent ad-tech companies, accounting for less than 0.1% of the market for brand safety tools.

Attacks on NewsGuard by Publishers Unhappy with Ratings

21. For several years, NewsGuard has faced criticisms from across the political spectrum that NewsGuard's ratings are biased in one direction or another. In one year, for example (actually within a period of a few months), one advocacy group produced a report claiming NewsGuard's ratings are biased against conservatives while another published a separate report claiming NewsGuard's ratings are biased in favor of conservatives.

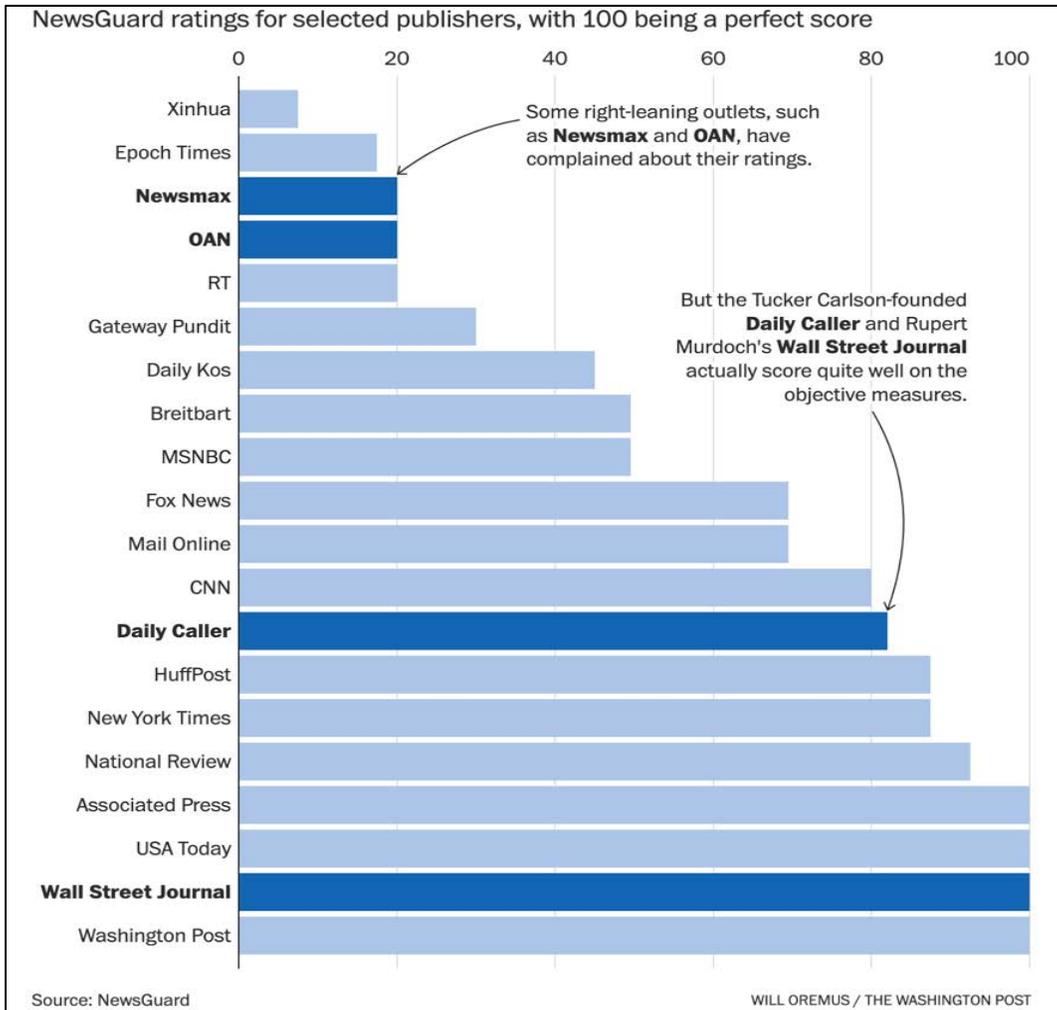
22. Attacks on NewsGuard have come from news publishers that receive lower scores based on NewsGuard's application of journalistic criteria.

23. In 2023, *Consortium News*, a left-leaning website that received low reliability ratings, sued NewsGuard for defamation and supposed claims under the First Amendment. The case was dismissed, as the court held that NewsGuard's ratings were protected editorial opinion. *Consortium for Indep. Journalism, Inc. v. United States*, 23 Civ. 7088 (KPF), 2025 WL 919504, at *16–20 (S.D.N.Y. Mar. 26, 2025).

24. Newsmax, a conservative cable news network and digital media company, has mounted a campaign attacking NewsGuard, beginning in 2023 and continuing to the present. Newsmax has asserted repeatedly in its programs and publications that NewsGuard is biased against conservative media and websites.

25. Newsmax also received low ratings for adherence to journalistic standards, ratings that are markedly lower than those for other conservative news sources such as Fox News, the *National Review*, and *The Washington Times*.

26. Newsmax’s attacks were and are unfounded. As noted above, NewsGuard’s ratings of all news sources are based on nonpartisan journalistic criteria and are agnostic to the political or editorial viewpoints of the publishers. For example, Fox News receives a higher reliability rating than MSNBC, while the conservative *Washington Examiner* outscores the liberal *Daily Beast*. The following is a summary table reported by the *Washington Post* in late 2024:⁹



A copy of the *Washington Post* article is attached hereto as **Exhibit 3**.

⁹ Will Oremus & Naomi Nix, *This Company Rates News Sites’ Credibility. The Right Wants It Stopped.*, Wash. Post (Dec. 24, 2024), <https://www.washingtonpost.com/technology/2024/12/24/newsguard-disinformation-censorship-free-speech>.

Putative Congressional Investigations Targeting NewsGuard

27. When Republicans took control of the House in 2023, several committees opened investigations and issued statements taking aim at media and tech companies for supposed anti-conservative bias.

28. The House Oversight and Small Business Committees opened an investigation in June 2024, with Oversight Committee Chairman James Comer appearing on Newsmax and agreeing that “their [NewsGuard’s] goal is obviously to bully conservative media out of existence.”¹⁰ A *Deadline* article reporting on this interview with Comer is attached as **Exhibit 4**. After NewsGuard presented evidence to the committee about its nonpartisan, journalistic ratings process, the investigation did not proceed.

29. In September 2024, the House Small Business Committee released an interim staff report entitled “Small Business: Instruments and Casualties of the Censorship-Industrial Complex,” which also took aim at NewsGuard with unsubstantiated claims of bias.¹¹ That effort also did not proceed further.

30. In early 2025, the Senate Judiciary Committee held a hearing on what it called the “Censorship Industrial Complex.” NewsGuard cooperated, addressed the Committee’s questions, again explaining and providing evidence that NewsGuard’s ratings are nonpartisan and do not reflect anti-conservative bias. That investigation also has not proceeded.

¹⁰ Ted Johnson, *Attacking the Watchdog: How Media Rating Site NewsGuard Ended Up as a Target for GOP Lawmakers and Regulators*, *Deadline* (Dec. 19, 2024, at 12:17 ET), <https://deadline.com/2024/12/newsguard-newsmax-trump-fcc-1236202249>.

¹¹ H. Comm. on Small Bus., 118th Cong., *Small Business: Instruments and Casualties of the Censorship-Industrial Complex* 42–59 (Interim Staff Rep. 2024), https://smallbusiness.house.gov/uploadedfiles/house_committee_on_small_business_-_cic_report_september_2024.pdf.

Administration Officials' Public Attacks Targeting NewsGuard

31. On November 12, 2024, then-Commissioner Ferguson posted on X (formerly Twitter) about the closure of the U.S. Department of State's Global Engagement Center¹² by referring to NewsGuard specifically, asserting it had supposedly “led collusive ad-boycotts—possibly in violation of our antitrust laws—to censor the speech of conservative and independent media in the United States.”¹³ A copy of Ferguson's post on X is attached hereto as **Exhibit 5**.

32. Shortly afterward, Ferguson appeared in a podcast interview discussing how a new Republican-led FTC (after Trump's inauguration) could act against organizations he believes are part of the “censorship industrial complex.”¹⁴ Again he called out NewsGuard by name and warned that “antitrust laws may have something to do with what's been going on [with] ... advertiser boycotts.”¹⁵ A copy of Ferguson's post on X concerning the podcast is attached hereto as **Exhibit 6**.

¹² The Global Engagement Center was an interagency entity established in 2016 to expose and counter foreign propaganda and disinformation, closed in April 2025 by Secretary of State Marco Rubio following accusations by GOP lawmakers that the office censored conservative voices. *See* Maggie Miller, *State Department Eliminates Key Office Tasked with Fighting Foreign Disinformation*, Politico (Apr. 16, 2025, at 13:25 ET), <https://www.politico.com/news/2025/04/16/state-department-shutters-gec-foreign-disinformation-00292982>.

¹³ Andrew Ferguson (@AFergusonFTC), X (Nov. 11, 2024, at 20:51 ET), <https://x.com/AFergusonFTC/status/1856152760850243905?s=20>.

¹⁴ Mike Benz (@MikeBenzCyber), X (Nov. 24, 2024, at 18:59 ET), <https://x.com/mikebenzcyber/status/1860835679560765841?s=46&t=2yQS3wsEbvI9bCYB3nT64Q>.

¹⁵ *Id.*; *see also* Andrew Ferguson (@AFergusonFTC), X (Nov. 27, 2024, 9:33 AM), <https://x.com/AFergusonFTC/status/1861780403092099278> (Ferguson post on X forwarding podcast host's tweet that Ferguson had “laid out a compelling vision for how the FTC can take on advertiser boycott collusion in the Internet censorship space”).

33. Later in November 2024 during an interview on Steve Bannon’s “War Room” podcast, Ferguson reiterated his view of the importance of going after “purely private censorship” and the “censorship industrial complex.”¹⁶ “[P]rogressives, Silicon Valley, everyone who is fighting ‘disinformation,’ they’re not just going to give up because of the election. ... And that’s where I think that it’s really important that the FTC take investigative steps in the new administration under President Trump.”¹⁷ A copy of a transcript of the podcast is attached hereto as **Exhibit 7**.

34. Brendan Carr, the Chairman of the Federal Communications Commission appointed by President Trump, has echoed Ferguson’s attacks on NewsGuard. In a November 2024 letter to the CEOs of Alphabet, Microsoft, Meta, and Apple, then-Commissioner Carr claimed NewsGuard was part of a “censorship cartel” and that the company “leverag[es] its partnerships with advertising agencies to effectively censor[] targeted outlets.”¹⁸ Carr said the incoming Trump Administration would investigate and take action against NewsGuard and companies that used its services for protecting brand safety, declaring that the so-called “cartel” must be “completely dismantled.”¹⁹ A copy of Carr’s letter is attached hereto as **Exhibit 8**.

35. In December 2024, Commissioner Ferguson asserted the FTC “ought to conduct ... an investigation” because, he said, NewsGuard “seems to give a free pass to ... major left-leaning

¹⁶ Kari Donovan, *Bannon’s WarRoom, Show Clip Roundup 11/30/2024 [AM]*, War Room (Nov. 30, 2024), <https://warroom.org/bannons-warroom-show-clip-roundup-11-30-2024-am>.

¹⁷ *Id.*

¹⁸ Letter from Brendan Carr, FCC Comm’r to CEOs (Nov. 13, 2024), <https://www.fcc.gov/sites/default/files/DOC-407732A1.pdf>.

¹⁹ *Id.*

outlets.”²⁰ Attached as **Exhibit 9** is a copy of a concurring statement of Commissioner Ferguson in an unrelated matter making this assertion. At the time, Ferguson was a candidate for FTC chairman, and in public statements promoting his candidacy, he stated that he had a “track record of standing up to ... the radical left” and would “[i]nvestigate advertiser boycotts” and ““progressives who are targeting disinformation.””²¹ A copy of Ferguson’s statement is attached hereto as **Exhibit 10**.

36. In a November 15, 2024 public statement, NewsGuard responded to Commissioner Carr, demonstrating that many conservative-leaning news sources get high reliability ratings while other, liberal publications get lower ratings based on NewsGuard’s journalistic criteria.²² A copy of this statement from Gordon Crovitz is attached hereto as **Exhibit 11**.

37. In February 2025, the FTC issued a Request for Information (“RFI”) seeking public comment on “Technology Platform Censorship,” asserting that social media providers and other “tech platforms” are engaged in “censorship” that is “potentially illegal.”²³ A copy of the FTC’s press release is attached hereto as **Exhibit 12**.

²⁰ Concurring Statement of Commissioner Andrew Ferguson, *FTC v. 1661, Inc. d/b/a GOAT* (Dec. 2, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-goat-concurrence.pdf.

²¹ Press Release, PunchBowl News, FTC Commissioner Andrew N. Ferguson for FTC Chairman, <https://punchbowl.news/wp-content/uploads/FTC-Commissioner-Andrew-N-Ferguson-Overview.pdf>.

²² Statement from Gordon Crovitz, NewsGuard, on Brendan Carr Letter (Nov. 15, 2024), <https://www.newsguardtech.com/wp-content/uploads/2024/11/NewsGuard-Statement-on-Brendan-Carr-Letter.pdf>.

²³ Press Release, Fed. Trade Comm’n, *Federal Trade Commission Launches Inquiry Into Tech Censorship* (Feb. 20, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/02/federal-trade-commission-launches-inquiry-tech-censorship>; see Request for

38. In an April 2025 interview, Chairman Ferguson explained how the FTC could use its “tremendous array of investigative tools” and “coercive power—formal and informal” to demand compliance to its views about supposed online “censorship.” Ferguson further stated: “The regulators can show up, they can audit, they can investigate, they can cost you a lot of money, and the path of least resistance is: ‘Do what we say.’”²⁴ A copy of the transcript of Ferguson’s comments is attached hereto as **Exhibit 13**.

39. Previously, in 2020 (before he was appointed as FTC Chairman), Ferguson said “No government agency should be in the business of policing speech.”²⁵ Before he became FCC Chairman, Carr said that “the government shutting down speech” is “a 1A [First Amendment] issue,” but “a private platform doing it” is not.²⁶ “It’s always a person in power (merely fallible or with a political agenda) that censors speech,” he said then.²⁷ Attached **Exhibit 5** and **Exhibit 14** are posts of Ferguson and Carr on X and Twitter containing these statements.

The FTC’s CID to NewsGuard

40. On May 20, 2025, the FTC issued a sweeping CID to NewsGuard, 21 pages long, containing 31 Specifications (with dozens of subparts) demanding vast numbers of confidential and sensitive documents. The CID requires production of “all documents relating to NewsGuard’s

Public Comment Regarding Technology Platform Censorship,
https://www.ftc.gov/system/files/ftc_gov/pdf/P251203CensorshipRFI.pdf.

²⁴ *Transcript: FTC Chairman Andrew Ferguson Keynote Part II*, ProMarket (Apr. 21, 2025), <https://www.promarket.org/2025/04/21/transcript-ftc-chairman-andrew-ferguson-keynote-part-ii>.

²⁵ Andrew Ferguson (@AFergusonFTC), *supra* note 13.

²⁶ Brendan Carr (@BrendanCarrFCC), X (Apr. 15, 2020), at 6:47 PM <https://x.com/BrendanCarrFCC/status/1250601632339034114>.

²⁷ *Id.*

News Reliability Ratings and any other rating[s];” all materials about NewsGuard’s work product and methodology; all documents about websites and news sources rated; all ratings and reviews issued; any and all analyses of the effects of NewsGuard’s ratings on advertisers and publishers; and any studies relating to social media or digital advertising; identification of all NewsGuard customers; and essentially all communications from or to NewsGuard. *See* FTC Civil Investigative Demand, FTC File No. 251-0061 (May 20, 2025) (the “NewsGuard CID”). A copy of the NewsGuard CID is attached hereto as **Exhibit 15**.

41. The CID calls for all documents from January 1, 2018, to the present. NewsGuard CID at 8 (Instruction I1). As NewsGuard was founded and began operations in 2018, it is no exaggeration to say that it demands virtually all documents, information, and records of NewsGuard from the company’s inception to the present, including those relating to NewsGuard’s analyses, methodology, editorial judgments, customers, journalism, and reporting.

42. NewsGuard responded and objected to the FTC that the CID raised serious concerns, as it was targeted at free speech and associational rights of the company and its customers and was extraordinarily overbroad and burdensome. NewsGuard raised its concerns from the outset and throughout its dealings with FTC staff, attempting to explain that NewsGuard’s ratings, its editorial decisions, and its dealings with customers are plainly protected First Amendment activities.

43. NewsGuard nonetheless sought to work constructively with FTC staff to provide such information as it could without infringement of First Amendment rights. NewsGuard participated in ten meet-and-confer discussions over the course of eight months and produced over 40,000 pages of documents in multiple rounds.

44. In the discussions with FTC staff, NewsGuard demonstrated (as it had earlier in information provided to congressional committees) that its ratings utilize established journalistic standards and practices. NewsGuard also submitted information demonstrating that the company's share of the market for advertiser brand safety tools is so *de minimis*—less than 0.1%—that NewsGuard could not possibly be a legitimate target of an antitrust investigation of that market.

45. On January 15, 2026, two days after the parties' last meet-and-confer discussion, FTC staff sent a letter purporting to be a "good faith effort to reduce NewsGuard's burden," but which was in reality a doubling down on the CID's unconstitutional demands. A copy of the FTC staff's letter is attached hereto as **Exhibit 16**.

46. Despite NewsGuard's seven months' efforts to cooperate, FTC staff simply repeated several of the most intrusive, infringing demands made from the outset, including: (1) identification of all NewsGuard subscribers; (2) communications with customers; (3) identification of all entities to which NewsGuard had ever assigned a News Reliability Rating; (4) the particulars of each rating assigned to each entity over time; and (5) documents to show how NewsGuard has developed methodologies for ratings, including internal correspondence.

47. The FTC's repeated demands for identification of NewsGuard's subscribers (and production of all communications with subscribers) are especially troubling because of the many statements of Chairman Ferguson and FCC Chairman Carr about targeting tech and media companies supposedly associated with a "censorship cartel." NewsGuard has ample grounds for concern that the FTC aims to find NewsGuard's customers to pressure them, too.

48. Throughout the dealings with NewsGuard, FTC staff refused to give assurances that NewsGuard's productions and disclosures satisfied the CID, and they reiterated that position

in the January 15, 2026, letter. FTC staff members instead have insisted NewsGuard remains obligated to provide all documents and information called for by the original CID.

49. Responding to the CID was an immensely time-consuming and expensive effort. NewsGuard's executives and staff spent hundreds of hours working to provide information and documents to the FTC. NewsGuard's expenses mounted as the investigation continued, to the point that legal fees alone exceeded 30% of NewsGuard's total revenues from its sales of brand-safety services to advertising industry customers.

The FTC's Omnicom Consent Order Blacklisting NewsGuard

50. On December 9, 2024, Omnicom Group Inc. (Omnicom) announced that it had entered into an agreement to acquire The Interpublic Group of Companies, Inc. (IPG).²⁸

51. Omnicom and IPG were the world's third- and fourth-largest companies involved in media buying for ad agencies and advertisers, and, combined, they would be the world's largest advertising agency and media buying company.

52. The companies apparently negotiated with the FTC through the first half of 2025 to obtain approval of the merger, although there were no public statements or announcements about these discussions. Despite that NewsGuard was attempting to work with FTC during this time (and throughout 2025) concerning the CID, FTC staff did not mention or address the proposed Omnicom merger with NewsGuard.

53. On June 23, 2025, the FTC filed a *pro forma* complaint concerning the merger while simultaneously announcing that it had accepted a proposed consent order from the

²⁸ Press Release, Omnicom, Omnicom to Acquire Interpublic Group to Create Premier Marketing and Sales Company (Dec. 9, 2024), <https://www.omc.com/newsroom/omnicom-to-acquire-interpublic-group-to-create-premier-marketing-and-sales-company>.

companies.²⁹ Proposed Decision & Order, *Omnicom Grp. Inc.*, FTC File No. 251-0049, 2025 WL 2355514 (June 23, 2025). A copy of the FTC’s proposed order is attached hereto as **Exhibit 17**.

54. The substantive provisions of the proposed order focused on precluding Omnicom or its agencies from doing business with any news rating service or entity that “[d]irects Advertisers’ advertising spend based on the Media Publisher’s political or ideological viewpoints, or the political or ideological viewpoints expressed in content that the Media Publisher sells advertising to run alongside of.” *Id.* at *2.

55. When the proposed consent order was made public, Chairman Ferguson released a statement specifically calling NewsGuard an organization that “ha[s] publicly sought to use the chokepoint of the advertising industry to effect political or ideological goals” and alleging that NewsGuard steers “advertising revenue with ‘an unavoidable partisan lens.’”³⁰ A copy of Chairman Ferguson’s statement is attached hereto as **Exhibit 18**.

56. Following the FTC’s publication of the proposed order, Newsmax ran a series of stories contending the order did not go far enough as it would not prohibit Omnicom from using NewsGuard’s rating services, given that NewsGuard does not direct or recommend “advertising spend” based on “political or ideological viewpoints.”³¹ A June 26, 2025 article from Newsmax article to this effect is attached hereto as **Exhibit 19**.

²⁹ Press Release, Fed. Trade Comm’n, FTC Prevents Anticompetitive Coordination in Global Advertising Merger (June 23, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/06/ftc-prevents-anticompetitive-coordination-global-advertising-merger>.

³⁰ Statement of Chairman Andrew N. Ferguson, *Omnicom Grp. Inc.*, FTC File No. 251-0049, at 5 & n.34 (June 23, 2025) (quoting H. Comm. on Small Bus., *supra* note 11), https://www.ftc.gov/system/files/ftc_gov/pdf/omnicom-ipg-ferguson-statement_0.pdf.

³¹ See, e.g., Paul Bond, *Megamerger Omnicom, IPG Mum About NewsGuard Bias*, Newsmax (June 26, 2025, at 17:35 ET), <https://www.newsmax.com/us/news-bias-ftc-omnicom/2025/06/26/id/1216643>.

57. The FTC set aside a comment period for the proposed consent order. We decided not to comment because, as written, the proposed order did not apply to NewsGuard.

58. Newsmax apparently noticed this issue with the proposed consent order too—and argued in its comments to the FTC and on its network that the proposed consent order should be revised to expressly target NewsGuard. Newsmax filed a letter urging the FTC to expand the prohibitory condition (to ensure Omnicom and its ad agencies “can no longer use biased rating organizations, fact checkers, and other third-parties to engage in censorship of disfavored news outlets”).³² A copy of Newsmax’s comment letter is attached as **Exhibit 20**.

59. Similarly, in broadcasts and online, Newsmax commentators said the proposed order was inadequate because it “says nothing at all about stopping these agencies from using third-party ratings services like NewsGuard to block media like Newsmax.”³³ Attached as **Exhibit 21** is a Newsmax article of John Tabacco making this statement.

60. Newsmax also lobbied Chairman Ferguson, members of Congress, and the President through social media posts. In a post on X directed to Chairman Ferguson, Newsmax asserted the FTC’s proposed order was insufficient because it “makes no mention of ‘censorship’ or ‘targeting conservatives’” and “[f]ully allows Omnicom to use left-wing NewsGuard.”³⁴ A copy of this post is attached as **Exhibit 22**.

³² Newsmax Media Inc., Comment Letter on Proposed Consent Order 13 (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0008>.

³³ *Newsmax’s Tabacco Slams FTC Approval of Omnicom-IPG Merger*, Newsmax (Aug. 3, 2025, at 07:23 ET), <https://www.newsmax.com/newsfront/tabacco-ftc-omnicom/2025/08/02/id/1221045>.

³⁴ NEWSMAX (@NEWSMAX), X (July 31, 2025, at 21:58 ET), <https://x.com/NEWSMAX/status/1951100290775630054>.

61. Two conservative advocacy groups (which are supported by and receive funding from Newsmax) submitted a letter urging the FTC impose a merger condition barring Omnicom from working with “ostensibly neutral third-party monitors such as NewsGuard,” which the groups claimed “in practice serve as gatekeepers that suppress conservative and heterodox content.”³⁵

62. Numerous First Amendment scholars and free speech organizations also submitted comments regarding the initial proposed order, explaining its unconstitutionality,³⁶ but the FTC made no mention of these comments.

63. The FTC subsequently issued a revised order removing terms about using third-party services with “political or ideological bias.” Instead, the FTC revised the Consent Order to prohibit the merged Omnicom entity or its ad agencies from using third-party services that evaluate “viewpoints as to the veracity of news reporting” and “adherence to journalistic standards or ethics.”³⁷ There was no further comment period when NewsGuard could address or object to this revised language. The FTC adopted the final order, a copy of which is attached as **Exhibit 23**, on September 26, 2025.

64. In sum, the FTC ordered that Omnicom and all its affiliates and ad agencies cannot contract with or use nonpartisan review and ratings services based on journalistic criteria,

³⁵ Indep. Media Council & CPAC Found. Ctr. for Regul. Freedom, Comment Letter on Proposed Consent Order 2 (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0010>.

³⁶ See, e.g., Public Knowledge, Comment Letter on Proposed Consent Order (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0013>; TechFreedom, Comment Letter on Proposed Consent Order (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0015>; Vikram David Amar & Ashutosh Bhagwat, Comment Letter on Proposed Consent Order (July 28, 2025), <https://www.regulations.gov/comment/FTC-2025-0066-0009>.

³⁷ Order, *Omnicom Grp. Inc.*, FTC Docket No. C-4823, §§ I.D, II.A (Sept. 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/OmnicomOrder.pdf.

essentially banning the combined merged company and its affiliates from providing brand safety to its clients by subscribing to information about the reliability of news publishers.

Harms to NewsGuard and Its Customers from the Consent Order

65. The FTC’s imposition of the Omnicom Consent Order has had significant negative impacts on NewsGuard’s business, and the harm is likely to continue.

66. For example, after the Consent Order came out, a longtime client that does significant business with Omnicom informed us that they would not be renewing their contract, not because of any dissatisfaction with NewsGuard’s service but because of “[r]ecent developments that require us to take a more cautious approach to this area of our business.”

67. NewsGuard also stands to lose business from the newly merged Omnicom as a direct result of the Consent Order. Since 2019, NewsGuard has had a contract with IPG to make ratings available to brands represented by the agency that seek information about the reliability of different publishers. IPG has proudly touted this arrangement and data available through the agreement in press releases, industry event panels, and case studies. But it is questionable (or doubtful) that the agency will continue with the contract now that it has been absorbed by Omnicom and is subject to the Consent Order.

68. The Omnicom Consent Order amounts to a government-imposed blacklist prohibiting Omnicom and its affiliates from using NewsGuard’s services. Other agencies and companies seeking to use NewsGuard’s ratings and services also face the prospect of FTC investigations, enforcement actions, and liability if they do not divorce themselves from dealings with NewsGuard.

69. Overall, the burdens and restrictions imposed by the FTC through its onerous “investigation” and the prohibition of the Consent Order have made it nearly impossible for NewsGuard to conduct its journalism business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Signed in New York, NY.

Dated: February 11, 2026


Matthew Skibinski

Exhibit 1

wsj.com

The website of The Wall Street Journal, a daily newspaper founded in 1889 covering politics, global financial markets, the economy, lifestyle, and arts.

Ownership and Financing

Dow Jones publishes The Wall Street Journal, which is owned by the public media conglomerate News Corp, controlled by the Murdoch family. News Corp also owns Barron's, MarketWatch, HarperCollins, the New York Post, and other media entities. Murdoch also owns Fox Corporation.

In addition to producing its print and digital editions, The Wall Street Journal hosts conferences for business leaders. The site is financed through advertisements, subscriptions, and sales of the publication's other products, according to News Corp's annual report. Much of the site's content is only accessible to paid subscribers.

Content

WSJ.com publishes articles and videos with original reporting covering international politics, financial markets, technology, lifestyle, and the arts. Coverage is particularly focused on business and the economy, displaying stock quotes and a graph of market data on the top of its homepage.

The Journal regularly produces influential reporting on major companies, the economy, and government, such as 2025 stories on Google eliminating minority hiring programs and reviewing its diversity, equity, and inclusion (DEI) programs. In 2024, the Journal posted articles detailing the perils for the sports industry in embracing online gambling and revealing that banks had sold \$5.5 billion of X loans to meet rising investor interest in Elon Musk's social media company. The website also published "How Morgan Stanley Courted Dodgy Customers to Build a Wealth-Management Empire---Internal company documents describe the bank's weak anti-money-laundering controls and failure to complete due-diligence reviews as staff expressed alarm: 'We need to kill this'"; and an investigation into "The Toxic Atmosphere at the FDIC," with the subheading "how the federal banking agency failed to address sexual harassment and other toxic workplace behaviors by its employees."

In 2023, reporting produced stories on how Microsoft's \$75 billion bid for Activision Blizzard "could give it an unfair advantage to dominate the video-gaming industry"; why a luxury tower built in New York City's Hudson Yards development remains 50 percent empty; and the reasons

 100 / 100

High Credibility: This website adheres to all nine standards of credibility and transparency.

-  Does not repeatedly publish false or egregiously misleading content 22 points
-  Gathers and presents information responsibly 18
-  Has effective practices for correcting errors 12.5
-  Handles the difference between news and opinion responsibly 12.5
-  Avoids deceptive headlines 10
-  Website discloses ownership and financing 7.5
-  Clearly labels advertising 7.5
-  Reveals who's in charge, including any possible conflicts of interest 5
-  The site provides names of content creators, along with either contact or biographical information 5

Criteria are listed in order of importance. [Learn More.](#)

behind a recruiting crisis for the U.S. military, which in part is due to disillusioned veterans not wanting their children to follow in their footsteps.

The Journal has written frequently and critically about Facebook, the fall of health technology company Theranos and the cryptocurrency exchange FTX, and the purchase of Twitter by Elon Musk. For example, a January 2023 article, titled “Facebook Wanted Out of Politics. It Was Messier Than Anyone Expected,” detailed stumbling by the tech giant and how “the company’s sometimes tortured efforts over the past 18 months to play down politics and other divisive topics on the platform are outlined in internal documents reviewed by The Wall Street Journal.”

A weeklong 2021 series about Facebook (“The Facebook Files”), which received national attention and inspired congressional hearings, included “Facebook Knows Instagram Is Toxic for Teen Girls—Company Documents Show Its Own In-Depth Research Shows a Significant Teen Mental-Health Issue That Facebook Plays Down in Public.” The article stated, “For the past three years, Facebook has been conducting studies into how its photo-sharing app affects its millions of young users. Repeatedly, the company’s researchers found that Instagram is harmful for a sizable percentage of them, most notably teenage girls.”

“The Facebook Files” was based on leaked company documents, and underscored how Facebook has known for years about the harms its platform can cause, including the dissemination of vaccine misinformation and its role in creating and accelerating body-image issues among young girls. “Time and again, the documents show, Facebook’s researchers have identified the platform’s ill effects. Time and again, despite congressional hearings, its own pledges and numerous media exposés, the company didn’t fix them,” The Wall Street Journal reported.

The relationship between the Journal and Facebook, now known as Meta, has been contentious. Typical of the tech company’s response was a 2021 post titled “What The Wall Street Journal Got Wrong,” in which Nick Clegg, Facebook’s vice president of global affairs, wrote on a company blog about the weeklong series: “These stories have contained deliberate mischaracterizations of what we are trying to do, and conferred egregiously false motives to Facebook’s leadership and employees. At the heart of this series is an allegation that is just plain false: that Facebook conducts research and then systematically and willfully ignores it if the findings are inconvenient for the company.”

The fall of Theranos can be traced directly to 2015 articles in the Journal raising doubts about the company’s technology, revealing that most of its blood tests were run on commercial blood machines occasionally altered to work with small amounts of blood, as opposed to being run on the proprietary devices the company touted. One of its key original stories that year disclosed how “Under pressure from regulators, laboratory firm Theranos has stopped collecting tiny vials of blood drawn from finger pricks for all but one of its tests, backing away from a method the company has touted as it rose to become one of Silicon Valley’s hottest startups.” A week later, the newspaper disclosed, “The Walgreens pharmacy chain won’t open any new Theranos blood-testing centers until the startup company resolves questions about its technology, throwing a wrench into the startup’s grand expansion plans.”

On Nov. 10, 2015, reporter John Carreyrou, who did most of the key work for the paper and later wrote the bestseller “Bad Blood: Secrets and Lies in a Silicon Valley Startup,” disclosed how

“Safeway spent about \$350 million to build clinics in more than 800 of its supermarkets to offer blood tests by startup Theranos. But the tests never began, the clinics are now used largely for flu shots and travel-related vaccines, and the two companies have been negotiating to officially dissolve their partnership.” Ultimately, Theranos founder Elizabeth Holmes was indicted and convicted of defrauding investors and, in November 2022, sentenced to 11 years in prison. In May 2023, she began serving her sentence in a federal prison in Texas. According to Bureau of Prisons records, her sentence was then reduced by two years.

Other examples of the paper’s influential reporting include a series on TikTok, titled “How TikTok Serves Up Sex and Drug Videos to Minors — The popular app can quickly drive young users into endless spools of adult content, including videos touting drug use and promoting pornography sites.”

The newspaper examined the coworking space startup WeWork, “How Adam Neumann’s Over-the-Top Style Built WeWork. ‘This Is Not the Way Everybody Behaves,’” and published a subsequent three-part podcast on its rise and fall of WeWork, done in conjunction with Gimlet Media. It detailed Boeing’s flawed 737 MAX model, “The Four-Second Catastrophe: How Boeing Doomed the 737 MAX.” The newspaper’s articles span political topics and other themes beyond the financial world, such as an in-depth article headlined “The FBI Lost Our Son,” which chronicled the disappearance of U.S. counterterrorism worker Billy Reilly.

WSJ.com contains an opinion section featuring regular columnists, reviews, and other editorials. Its opinion section, particularly the editorial page, has long been known for its conservative posture, summed up by its principle “free markets and free people” — a point of view that is not evident on its news pages.

The Journal has long had a big impact on financial markets, with features such as the popular “Heard on the Street” column that have caused stock prices to rise and fall.

In June 2019, The Wall Street Journal debuted a daily podcast called “The Journal.” Described on the site as “a show about money, business and power,” the 20-minute program focuses on a different major news story each day. A typical February 2025 episode, titled “The Snowballing Problems at Vail Resorts,” examined how the ski company is “facing issues with overcrowding and labor disputes,” and be both “the king of the mountain” but also “a victim of its own success.”

WSJ.com also offers articles on lifestyle, fashion, travel, and the arts, with headlines such as “How to Write a Great Dating Profile,” “Can Men Under 60 Wear Berets?” and “A Day in the Life of Kanye West’s Set Designer.” The weekend “Review” section includes one of the few robust book sections in a major newspaper.

WSJ.com also offers Chinese and Japanese editions.

Credibility

The Wall Street Journal has a history of more than 100 years of credible reporting, with bureaus worldwide. Articles are thoroughly sourced, featuring original interviews and outside research

and reporting. Some stories draw on months or more of research and interviews, such as its 2024 expose on “toxic workplace behaviors” at the FDIC. Headlines are straightforward and accurately reflect content. Its editorial page has a reputation for being responsibly provocative and conservative on most issues.

The site’s “About The Wall Street Journal Newsroom” page describes the newspaper’s policies regarding unnamed sources, which the site says should be used in an “extremely judicious” manner, as well as its commitment to seeking diverse sources “where appropriate,” including “people of different genders, races, religions, sexual orientation, geographic base and economic circumstance.”

A Corrections & Amplifications section describes and links to recent corrections made by the paper. Articles that have been corrected also are appended with a description of the correction at the bottom.

In a Jan. 24, 2017, story, the Journal was the first of several major publications to assert that Sergei Millian, a Belarusian American businessman, was the source of some of the most sensational claims in the so-called “Steele dossier.” The dossier, a subsequently discredited opposition-research report, was assembled by Christopher Steele, a former British spy, and linked then-President Trump to a Russian government attempt to interfere in the 2016 presidential campaign.

On Nov. 4, 2021, Igor Danchenko, a Russia analyst who assisted Steele, was indicted by a U.S. grand jury for lying to the FBI. On Nov. 5, 2021, the Journal reported that “A Russia analyst who fed information to the author of a salacious dossier about Donald Trump lied to federal investigators about his interactions with a business-group official he said was a source for the document, according to an indictment unsealed Thursday.”

After the 2021 Danchenko indictment, NewsGuard asked The Wall Street Journal whether it planned to issue a correction about the role attributed to Millian in its 2017 story. In an initial email to NewsGuard, following the indictment, Steve Severinghaus, The Wall Street Journal’s then-senior director for communications, said: “We’re aware of the serious questions raised by the allegations and continue to report and to follow the investigation closely.” Asked in a second email if a correction on Millian’s involvement was planned, Severinghaus declined comment, stating that “as soon as there is an update I will let you know.”

In October 2022, Danchenko was acquitted on four counts of lying to the FBI about one of his sources. Danchenko had asserted that he got a 2016 phone call from a man who did not identify himself, but who Danchenko thought might be Millian. According to The New York Times, “At the trial, prosecutors tried to cast doubt on whether any such call had happened and, if it did, whether Mr. Danchenko really believed at the time that it was Mr. Millian. But the evidence was insufficient to persuade the jury.”

While NewsGuard found the content on WSJ.com to overwhelmingly be accurate, NewsGuard did identify a recent instance of the newspaper advancing a false claim.

In a June 2023 op-ed on then-former President Trump's indictment over his handling of classified documents after he left office, Michael Bekesha, an attorney for Judicial Watch, a conservative watchdog group, defended Trump in an op-ed. "The Presidential Records Act allows the president to decide what records to return and what records to keep at the end of his presidency," Bekesha wrote.

However, this is not true. The Presidential Records Act requires that outgoing U.S. presidents turn over all records created under their administration before the end of their term. There is no provision that allows former presidents to sort through classified and unclassified documents after leaving office, according to legal experts and government oversight agencies.

The Journal ran a reader's response that disputed Bakesha's claim, and then published Bakesha's own response in which he sought to make a distinction between what did and did not constitute "agency records" under the act. He did not acknowledge the need for presidents to turn over all records created before they leave office, regardless of such a distinction.

In July, 2023, NewsGuard sent separate emails to three Wall Street Journal editors, inquiring about why the newspaper did not run a correction. NewsGuard did not receive a response.

Despite this misstep, NewsGuard did not find any other recent instances in which WSJ.com has published uncorrected false and misleading claims. Therefore, the site meets NewsGuard's standard for gathering and presenting news responsibly.

Commentary is published in a dedicated Opinion section, which contains articles and videos by the editorial board, regular columnists, reviews, and letters to the editor. Each opinion article is also labeled in the headline or at the top of the article.

The Wall Street Journal has won 38 Pulitzer prizes, including the 2023 award for investigative reporting for stories about "financial conflicts of interest among officials at 50 federal agencies, revealing those who bought and sold stocks they regulated and other ethical violations by individuals charged with safeguarding the public's interest," according to the contest's judges.

The paper also won a Pulitzer in 2019 in the national reporting category for its coverage of then-U.S. President Donald Trump's payoffs to women with whom he allegedly had affairs. In 2017, the paper received the Pulitzer Prize for commentary for columnist Peggy Noonan's coverage of the 2016 presidential election.

In January 2025, it won the 2024 Hinrich Foundation Award for Distinguished Reporting on Trade from the National Press Foundation for a series of stories on China's phasing out of U.S technology and Beijing's effort to undermine U.S sanctions.

In 2022, the paper won awards from the University of Florida for its TikTok investigations, and the National Press Press Foundation for "coverage of how Beijing has used its power and political leverage to give Chinese companies a permanent advantage in the global marketplace."

In May 2021, the newspaper won first-place awards from the Society for Advancing Business Editing and Writing (SABEW), including for its work on Facebook's stumbles to police hate speech in India, and for coverage of the failure of a high-profile entertainment startup, titled "Quibi Was Supposed to Revolutionize Hollywood. Here's Why It Failed---The instincts of Jeffrey Katzenberg and Meg Whitman, who headed the startup, proved wrong." It also won the SABEW video category for a documentary, "31 Days in March," chronicling "The Month Coronavirus Unraveled American Business."

In September 2021, the paper won its first national Emmy Award for reporter Joanna Stern's short documentary, "E-Ternal: A Tech Quest to Live Forever," which won in the category of Outstanding Science, Technology or Environmental Coverage." The documentary focused on methods to digitally preserve personal legacies, and those of loved ones, after death.

Transparency

WSJ.com discloses its ownership by Dow Jones & Company at the bottom of the homepage and other pages, and on the About page. That page also links to a form for contacting the newsroom and for reporting corrections.

A Masthead section identifies the company's top management and editorial leadership.

Articles typically include the name of the writer, with links to the author's biography, social media accounts, and usually their email address.

Advertisements and sponsored content are distinguished from editorial content.

History

The first products of Dow Jones & Company were brief news items called "flimsies," hand-delivered in New York City's financial district. The company launched The Wall Street Journal in 1889. Co-founder Charles H. Dow created the Dow Jones Industrial Average. The paper was aimed at the business community at a time when most newspapers focused on local or general news.

Bernard Kilgore became managing editor of The Wall Street Journal in 1941 and ran the newspaper for 25 years, expanding it to provide coverage beyond business and finance. The Journal has published many consequential articles over the years, including Pulitzer Prize winning coverage of stock market crashes and insider-trading scandals. In 1985, the Journal's "Heard on the Street" columnist, R. Foster Winans, was convicted on insider-trading charges, after he was found to have traded stocks based on what his column was about to report.

The Journal established its online version in 1996 and was one of the first newspapers to charge for its online content. News Corp acquired the Journal's publisher, Dow Jones, in 2007.

In February 2020, the Chinese government revoked the press credentials of three Wall Street Journal reporters based in Beijing, citing an opinion column in the paper referring to China as "the real sick man of Asia," which China called racist. The move marked the largest

simultaneous expulsion of multiple journalists from an international news agency by the Chinese government since the Mao era.

In 2020, The Wall Street Journal ran a marketing campaign focused on its efforts to clearly separate news and opinion. It came amid what Publisher Almar Latour told readers in an Aug. 12, 2020, letter is an overarching reality in media: “Agenda-driven reporting is on the rise; news and opinion are increasingly blended; and, not surprisingly, trust in the media has reached a new low.”

“Markets demand quality,” Latour wrote. “As such, there is no room to allow personal biases to mold facts to fit pre-determined narratives whether you are reporting on the economy or politics. Our journalists are committed to that.”

The opinion pages would “continue to provoke thought—and, no doubt, emotions—without interference.” The pages would remain committed to a philosophy of “free people, free markets,” and “their independence, like that of the Journal newsroom, is backstopped by a special committee and is unassailable.”

After the 2022 midterm elections, the Journal editorial page signaled that any and all original support of Trump and his presidency was over. An editorial’s headline left little ambiguity: “Trump Is the Republican Party’s Biggest Loser — He has now flopped in 2018, 2020, 2021 and 2022.”

As is its tradition, it did not endorse a candidate in the 2024 presidential race, instead running separate editorials on Kamala Harris and Donald Trump. Its Trump editorial concluded, “A second Trump term poses risks, but the question as ever is compared to what? Voters can gamble on the tumult of Trump, or the continued ascendancy of the Democratic left. We wish it was a better choice, but that’s democracy.”

In February 2024, the Journal made deep cuts to its Washington bureau, targeting the economics staff in a restructuring that eliminated nearly 20 jobs, according to The Washington Post. Responsibility for the bureau’s economics coverage was transferred to the business team in New York, and the U.S.-China news team was disbanded, the Post reported.

The Daily Beast, citing the union representing workers, reported that the Journal laid off 16 reporters and one columnist.

The Washington Post attributed the layoffs to a restructuring that Editor-in-Chief Emma Tucker has been conducting since her arrival in 2022. Tucker said in an email to staff that the Washington office will now cover “politics, policy, defense, law, intelligence and national security,” according to the Post, and that those who were laid off can apply for new jobs that the paper has created.

“It is imperative that we have the right structure in Washington to deliver trusted, ambitious reporting for our readers in an election year and beyond,” Tucker wrote in a February 2024 email to staff, the Post reported.

Disclosure: NewsGuard co-CEO Gordon Crovitz was formerly the publisher of The Wall Street Journal, a columnist for the publication, and the executive vice president of Dow Jones and president of its Consumer Media Group.

Editor's Note: This Nutrition Label was updated on Feb. 6, 2025. The label was updated previously on Feb. 2, 2024, to include news of layoffs in The Wall Street Journal's Washington bureau, and on Aug. 7, 2023, May 9, 2023, Nov. 23, 2022, Nov. 23, 2021, May 16, 2021, and March 5, 2020.

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(Trump editorial prior to 2024 election)

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PROPRIETARY INFORMATION

Exhibit 2

newsmax.com

The website of conservative cable TV network Newsmax, which has repeatedly published false or egregiously misleading claims about U.S. politics and health.

Ownership and Financing

The website is owned by Newsmax Media Inc., a Florida-based company founded by Christopher Ruddy, who is the company's CEO, president, and editor-in-chief. Ruddy has described himself as a close friend of former U.S. President Donald Trump's and frequently offered commentary on the Trump administration for other news organizations.

Ruddy is the majority owner of Newsmax Media, according to a January 2025 article from The Algemeiner Journal, which covers news about the Jewish community and Israel and included Ruddy on its list of "The Top 100 People Positively Influencing Jewish Life."

Newsmax.com runs advertisements, charges for premium content, and links to an online store.

Content

The website covers U.S. and international politics, culture, technology, and science. Sections are divided into categories including Newsfront, Health, Money, World, Politics, and Opinion.

Newsmax has a cable television network, with programming live-streamed on the site and clips from interviews posted in the site's Newsmax TV section. Individual episodes of Newsmax TV shows are hosted on a separate website, NewsmaxTV.com. Ruddy told Bloomberg Business in 2014 that, compared with Fox News, Newsmax TV is intended to be "more information-based rather than being vituperative and polarizing."

The site publishes primarily conservative columns in its Opinion section. Opinion contributors have included Republican U.S. Sen. Marsha Blackburn of Tennessee, former Republican U.S. Rep. Ron Paul, and Betsy McCaughey, a Republican former lieutenant governor of New York.

Newsmax.com supplements content produced by staff with articles by The Associated Press and Reuters.

Credibility

 20 / 100

Proceed with Maximum

Caution: This website is unreliable because it severely violates basic journalistic standards.

-  Does not repeatedly publish false or egregiously misleading content 22 points
-  Gathers and presents information responsibly 18
-  Has effective practices for correcting errors 12.5
-  Handles the difference between news and opinion responsibly 12.5
-  Avoids deceptive headlines 10
-  Website discloses ownership and financing 7.5
-  Clearly labels advertising 7.5
-  Reveals who's in charge, including any possible conflicts of interest 5
-  The site provides names of content creators, along with either contact or biographical information 5

Criteria are listed in order of importance. [Learn More.](#)

While some of Newsmax's videos and articles rely on firsthand interviews with politicians or summarize reports from credible news organizations such as The Wall Street Journal and the Washington Examiner, the site has regularly published articles with false or egregiously misleading claims, including about U.S. politics and health.

For example, a January 2025 article headlined "Stop Voicing Moral Equivalency on Biden, Trump Pardons," said of the Jan. 6, 2021, attack on the Capitol, "then-House Speaker Nancy Pelosi and Washington Mayor Muriel Bowser had refused an offer by the former president to deploy 10,000 National Guard troops for extra security and had urged his supporters to march peacefully and patriotically to the Capitol building to make their voices heard."

In fact, there is no evidence that Pelosi or Bowser denied a request for National Guard assistance before or during the attack on the Capitol, or that President Donald Trump authorized 10,000 National Guard troops to be deployed before Jan. 6.

Biden administration Pentagon spokesman John Kirby told The Washington Post in December 2021 that officials found no record that Donald Trump ordered the deployment of National Guard troops. Pelosi's office denied receiving such a request. "The Speaker's Office has made it clear publicly and repeatedly that our office was not consulted or contacted concerning any request for the National Guard ahead of Jan. 6," Pelosi spokesman Drew Hammill told Agence France-Presse in March 2021.

Moreover, the D.C. National Guard is controlled by the U.S. president and the executive branch, not by the Speaker of the House, and Trump would not have needed Pelosi or Bowser's approval to deploy the Guard in the nation's capital.

"Had President Trump ordered 20,000 National Guard soldiers to the Capitol before Jan. 6, it would have happened," Dwight Stirling, CEO of the Center for Law and Military Policy, a think tank whose stated mission is to "strengthen the legal protections of service members and veterans," told PolitiFact in June 2022. "No one can prevent a presidential order from being followed with regard to where troops go or what they do. That it didn't occur is evidence that no such order was issued."

Another January 2025 article titled "Dick Morris to Newsmax: Soros Award Signals Biden's 'Free-for-All,'" quoted an interview with Newsmax contributor Dick Morris on Newsmax TV's "The Count." During the interview, Morris stated: "The Biden people had hoped that this election could be stolen. They'd hoped that the election irregularities of 2020 could be repeated and intensified, and Donald Trump wouldn't let that happen. He cracked down on fraudulent voting in most of the swing states. You saw very little of that in Georgia and North Carolina, which were epicenters of fraud in the last election."

In fact, top election officials in all 50 states affirmed the integrity of the 2020 election, according to a New York Times report. Numerous federal officials and independent observers have reached the same conclusion. In a Nov. 12, 2020, statement, the U.S. Cybersecurity and Infrastructure Security Agency (CISA), part of the Department of Homeland Security, called the 2020 election "the most secure in American history," stating, "There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised." Then-

Attorney General William Barr told The Associated Press on Dec. 1, 2020, that “we have not seen fraud on a scale that could have effected a different outcome in the election.”

None of that countervailing evidence was mentioned in the Newsmax.com article.

A November 2024 article headlined “Ivermectin Has Anticancer Properties,” stated: “A number of studies are now showing that ivermectin is a useful anticancer agent, with properties that make it even more effective than almost all chemotherapy drugs. At the least, it should be used as a powerful enhancer for traditional treatments.”

In fact, health experts have said there is currently no evidence that ivermectin can successfully treat or cure cancer in humans. Skyler Johnson, a radiation oncology professor at the University of Utah, told PolitiFact in a December 2024 fact-checking article that none of the available research “supports the claim that Ivermectin is an effective treatment for cancer.”

As evidence for its claims about ivermectin being a “useful anticancer agent,” the Newsmax.com article referenced a study published in the journal NPJ Breast Cancer in March 2021, which the article described as finding “ivermectin could convert [breast cancer] tumors into a state that makes them excellent targets for destruction by immune cells.” However, the Newsmax.com article did not mention that this study was conducted in mice, not in humans.

Dr. Peter Lee, chair of the immuno-oncology department at City of Hope Comprehensive Cancer Center in California and co-author of the study, told The Associated Press in February 2023, “Certainly by itself ivermectin is not a cure or even an effective treatment for breast cancer.”

An October 2024 article titled “Dems Push to End Citizenship as Voting Requirement,” stated: “A Spanish language flyer found inside walls of portable toilets at the Resource Center Matamoros nongovernmental organization (NGO) encampment south of Mexico’s border with Texas confirms it all, urging many millions of migrants to vote illegally for Biden once they have arrived inside the U.S.”

The article cited a report from the Oversight Project, a research arm of the conservative think tank The Heritage Foundation, saying of the flyers: “Translated from Spanish, the message states, ‘Reminder to vote for President Biden when you are in the United States. We need another four years of his mandate to stay open.’”

However, Resource Center Matamoros (RCM)’s founder Gaby Zavala told The Associated Press in an article published in April 2024 – six months before the Newsmax article was posted – that her organization did not produce the flyer. Zavala said: “[The organization] does not encourage immigrants to register to vote or cast ballots in the U.S.” This caveat was not included in Newsmax’s article.

Moreover, NewsGuard’s review of the flyer, using photo verification tool InVid, found inconsistencies with the formatting and numerous grammatical errors, suggesting it was fabricated. The tool identified inconsistencies in the formatting of RCM’s logo and in the text

encouraging migrants to vote for Biden — signs of digital tampering. Also the text of the flyer was rife with basic Spanish grammatical errors, including misspelled words.

Because Newsmax.com regularly publishes false or egregiously misleading claims, including about U.S. politics and health, NewsGuard has determined that the site repeatedly publishes false or egregiously misleading content and does not gather and present information responsibly.

In previous reviews of the site, NewsGuard found numerous other examples of content that are consistent with NewsGuard's current determination. Older stories that remain on the site have advanced false claims about U.S. elections, COVID-19 vaccines, and abortion.

Although some headlines on the website have misstated facts, NewsGuard found that the articles that advanced false or egregiously misleading claims generally did not repeat those claims in headlines. For example, the January 2025 article mentioned above that advanced false claims about the 2020 U.S. presidential election was headlined "Dick Morris to Newsmax: Soros Award Signals Biden's 'Free-for-All.'"

Newsmax does not have a stated corrections policy. The most recent correction NewsGuard found in an originally reported Newsmax article was from June 2024. Because of the website's infrequent publishing of corrections, and because the website has not corrected significantly false content that remains on the website, NewsGuard has determined that Newsmax does not meet NewsGuard's standard for having effective corrections practices.

Newsmax discloses its political perspective on its About page, which states: "Newsmax Media, Inc. is a multimedia and broadcasting company that offers independent news with a conservative perspective."

Opinion articles are usually separated from news stories on the homepage and published in a dedicated section. However, content exclusive to subscribers in the site's Platinum section includes a mix of news articles and opinion, without distinguishing between the two.

For example, a January 2025 article titled "Biden's Legacy Will Be a Footnote in the Age of Trump," said of then-President Joe Biden, "His administration will be remembered for what it was: the last gasp of an aging, out-of-touch old guard too stubborn and arrogant to admit their time has passed."

Another January 2025 article headlined "Yes, Trump Could End the War in Ukraine in 100 Days," said of the Biden administration's handling of the Russia-Ukraine war, "While Biden's approach has ensured that the war battled on for three years, it has done nothing to bring it to a dignified or honorable close."

Because Newsmax.com has a dedicated opinion section, yet publishes opinionated content outside that section, NewsGuard has determined that the site does not handle the difference between news and opinion responsibly.

NewsGuard has exchanged emails and telephone calls with Newsmax since 2018, but has not received responses to a total of 25 follow-up emails seeking information about the website's content and editorial practices.

In January 2022, Newsmax CEO Christopher Ruddy asked NewsGuard to send questions by email. However, he did not respond to four emails sent over seven days seeking comment on the articles noted above, the site's approach to corrections, and its handling of opinion. Although the site itself did not reply to these multiple emails, Bill Daddi, president of New York-based DBC Brand Communications (a public relations firm), emailed NewsGuard on Newsmax's behalf in January 2022 and criticized NewsGuard's approach to assessing the accuracy of the site's health claims.

"The issue is, specifically as relates to health reporting, but that also applies to reporting in general, 'facts' are not always absolute and are subject to interpretation by the perspective of those presenting them," Daddi said. "They also evolve. This is certainly true as relates to health research. There are valid and significantly differing opinions on the topics you identified, with science on each evolving and changing over time. To present most health research as 'final' or 'established' is in itself misinformation and just patently not true. Yet it appears you aim to do so here."

In an April 2022 email to NewsGuard, Ruddy said, "We are asking that Newsguard stop sending any emails to Newsmax. We believe Newsguard holds a very liberal bias and we don't see your ratings as neutral or fair. Please alert your team to no longer send us questions. We will not respond."

Transparency

Newsmax.com does not clearly disclose its ownership. In earlier reviews, NewsGuard found that ownership was identified through a logo for "Newsmax Media" at the bottom of the website. However, as of January 2022, the logo has been changed to only "Newsmax," along with small print that states, "Newsmax, Moneynews, Newsmax Health, and Independent. American. are registered trademarks of Newsmax Media, Inc. Newsmax TV, and Newsmax World are trademarks of Newsmax Media, Inc."

In addition, The Washington Post reported in March 2024 that in 2019 and 2020, Newsmax received a previously unknown \$50 million investment from Sheikh Sultan bin Jassim Al Thani, a member of Qatar's royal family and the owner of London-based investment fund Heritage Advisors. The Post reported that Newsmax staff were told "to soften" their coverage of Qatar. Newsmax denied to the Post that it directed staff to slant Qatar coverage. Nevertheless, Newsmax.com does not inform its website readers of the investment.

Because Newsmax.com only identifies Newsmax Media in small print and does not reveal the Qatari sheikh's \$50 million investment, NewsGuard has determined that the website does not meet the standard for disclosing ownership and financing.

Ruddy is listed as the site's editor-in-chief in his biography, which is found in the site's Opinion section. The biography also describes him as founder, CEO, and president of Newsmax Media

Inc. NewsGuard has determined that this disclosure, while it is not centrally located on the website, meets NewsGuard's standard for revealing who is in charge.

Most originally reported articles include the writer's name and contact and biographical information, which meets NewsGuard's standard for providing information about content creators.

Sponsored articles on Newsmax.com from native advertising platforms Revcontent and Outbrain are only labeled as "Around the Web." This does not meet NewsGuard's standard for distinguishing advertising from editorial content.

As noted above, although NewsGuard has exchanged emails and telephone calls with Newsmax since 2018, it has not received responses to a total of 25 follow-up emails seeking information about the website's transparency practices.

History

Newsmax was founded in 1998 by Christopher Ruddy — inspired, he said, by the conservative site the Drudge Report. Michael Clemente, a former Fox News executive, was named CEO of Newsmax TV.

Ruddy's self-styled politics defy easy definition. A conservative and a critic of George W. Bush's war in Iraq, he wrote "The Strange Death of Vincent Foster," a book published in 1997 that promoted conspiracy theories about the suicide of Foster, deputy White House counsel in the Clinton White House. In more recent years, however, Ruddy has donated to the Clinton Foundation, called Bill Clinton "a friend," and defended Hillary Clinton against accusations that donations to the Clinton Foundation influenced her work as U.S. secretary of state.

Although he is not a registered Republican, Ruddy, a former reporter for the New York Post and the Pittsburgh Tribune-Review, told The Atlantic, "My sympathies are with the Republican Party." He is often described as a confidante of Trump's.

Following Donald Trump's defeat in the 2020 U.S. presidential election, Ruddy seized on the opportunity to grow Newsmax's audience with disenfranchised Fox News viewers who had tuned out after Fox called the election for former Vice President Joe Biden. Newsmax, which had refused to acknowledge Biden as president-elect, saw its primetime ratings soar in the days and weeks after the election. According to The New York Times, viewership of Newsmax's top shows increased from approximately 58,000 viewers to 1.1 million — a growth spurred by the network's commitment to a pro-Trump election narrative.

"In this day and age, people want something that tends to affirm their views and opinions," Ruddy told The New York Times in a November 2020 interview. However, Vox reported in July 2021 that Newsmax's viewership subsequently declined to an average of 114,000 viewers as of July 18, 2021.

In July 2020, The Daily Beast reported that Newsmax was among a string of news sites, including the Washington Examiner, The Jerusalem Post, Politicalite, and Spiked, that had been

duped into publishing opinion articles by a network of fictitious authors advancing pro-Emirati political narratives. Newsmax appears to have published at least four such articles, on topics including the relationship between Dubai's government and its business community, the use of crowdsourcing by mining companies, and potential investment opportunities in Iraq. Three of the four articles had been removed as of NewsGuard's August 2020 review, with the last — the Iraq story — remaining online as of January 2022.

In December 2020, Newsmax was sued for defamation by Eric Coomer, director of product strategy and security at Dominion Voting Systems, after Newsmax reported on the false allegation that Coomer had participated in an "Antifa conference call" to rig the 2020 election.

Newsmax settled the lawsuit in April 2021 without disclosing financial terms, retracted its original story, and apologized to Coomer. "Newsmax has found no evidence that Dr. Coomer interfered with Dominion voting machines or voting software in any way, nor that Dr. Coomer ever claimed to have done so," Newsmax said in a posting on the website. "Nor has Newsmax found any evidence that Dr. Coomer ever participated in any conversation with members of 'Antifa,' nor that he was directly involved with any partisan political organization."

As of January 2022, that retraction and apology had been removed from Newsmax.com.

In September 2024, voting-technology company Smartmatic reached a settlement with Newsmax in a defamation suit that alleged that Newsmax anchors and guests had spread false claims accusing the company of facilitating widespread fraud in the 2020 presidential election. The settlement was announced three days before opening statements in the trial were scheduled to begin.

Newsmax disclosed the terms of the settlement in a March 2025 filing with the U.S. Securities and Exchange Commission. According to the filing, Newsmax paid Smartmatic \$40 million in cash and options to purchase up to 2,000 shares of Newsmax stock for \$5,000 per share.

A Sept. 26, 2024, statement from Newsmax said, "Newsmax is pleased to announce it has resolved the litigation brought by Smartmatic through a confidential settlement." In a statement to CNN the same day, Smartmatic attorney Erik Connolly said of the settlement, "Lying to the American people has consequences. Smartmatic will not stop until the perpetrators are held accountable."

In August 2025, NewsMax reached a settlement with Dominion Voting Systems, which had sued the outlet in 2021 for defamation. The lawsuit sought \$1.6 billion in damages for Newsmax's claims that Dominion had rigged its voting machines to favor Joe Biden in the 2020 election. Newsmax disclosed the settlement's terms in an August 2025 SEC filing stating that it would pay Dominion \$67 million in three installments by Jan. 15, 2027.

In an Aug. 18, 2025, story on the website titled "Newsmax Announces Settlement With Dominion Voting Systems," the company defended its coverage, saying, "Newsmax believed it was critically important for the American people to hear both sides of the election disputes that arose in 2020. We stand by our coverage as fair, balanced, and conducted within professional standards of journalism."

The article also stated that the company chose to settle the case because it perceived bias on the part of Delaware Superior Court Judge Eric Davis. “The pattern of judicial rulings that consistently denied Newsmax due process left the company to believe it would not receive a fair trial,” the article stated. “Faced with these rulings and other constraints, Newsmax chose to settle the case.”

Editor’s Note: This Nutrition Label was updated on Aug. 19, 2025, to include information about the terms of Newsmax’s settlement with Dominion Voting Systems. The label was updated previously on March 14, 2025, March 6, 2025, Sept. 27, 2024, March 30, 2024, Jan. 22, 2024, Jan. 21, 2023, Jan. 20, 2022, Dec. 2, 2020, and Sept. 2, 2020.

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PROPRIETARY INFORMATION

Exhibit 3

Democracy Dies in Darkness

This company rates news sites' credibility. The right wants it stopped.

NewsGuard, which prizes its nonpartisan criteria, has become a prime target of the GOP's battle against disinformation watchdogs.

December 24, 2024 More than **1 year ago**

By [Will Oremus](#) and [Naomi Nix](#)

When veteran newsmen L. Gordon Crovitz and Steven Brill started their news site rating company, they were prepared for the inevitable cries of bias from both sides.

What they didn't anticipate was that NewsGuard, their company of about 50 employees, would become the target of congressional investigations and accusations from federal regulators that it was at the vanguard of a vast conspiracy to censor conservative views.

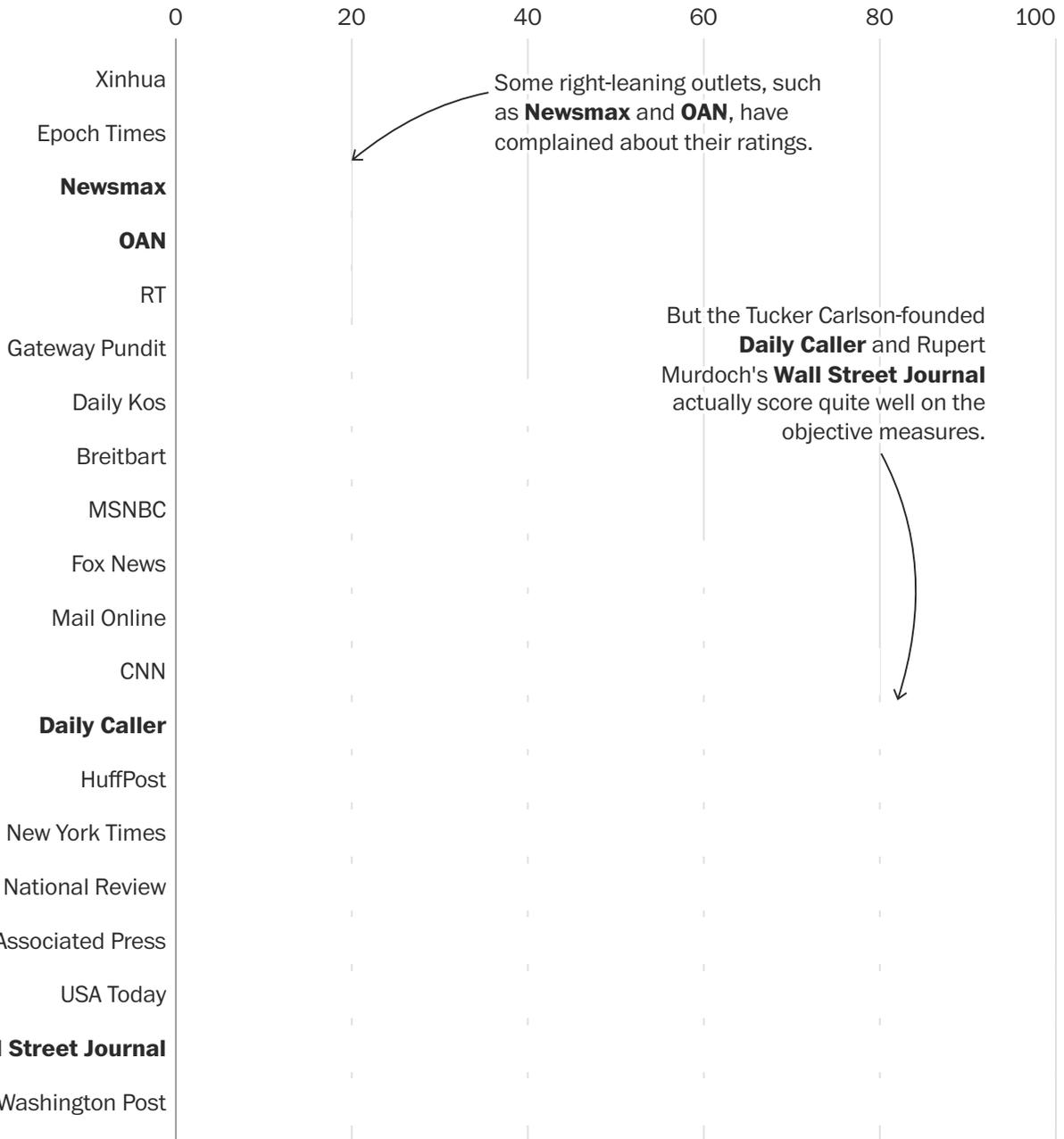
Since 2018, NewsGuard has built a business offering advertisers nonpartisan assessments of online publishers — backed by a team of journalists who assess which sites are reputable and which can't be trusted. It uses a slate of nine standard criteria, such as whether a site corrects errors or discloses its ownership and financing, to produce a zero to 100 percent rating.

Crovitz, a former publisher of the Wall Street Journal and a Republican, and Brill, a left-tending independent who founded Court TV and the American Lawyer magazine, engaged with publishers wanting to understand subpar ratings, sometimes wrangling for hours by phone over the details of a site's correction policy.

But conservatives now question the company's premise. Brendan Carr, President-elect Donald Trump's pick to lead the Federal Communications Commission, accused the company of facilitating a "censorship cartel," in a November letter to leading tech platforms. Noting that key legal protections depend on tech executives operating "in good faith," Carr continued: "It is in this context that I am writing to obtain information about your work with one specific organization — the Orwellian named NewsGuard."

Right-leaning outlets get mixed scores from NewsGuard

NewsGuard ratings for selected publishers, with 100 being a perfect score



Source: NewsGuard

WILL OREMUS / THE WASHINGTON POST

NewsGuard, backed by legal experts, argues that Carr’s letter may violate the First Amendment by threatening the speech rights of private companies.

“The only attempt to censor going on here is by Brendan Carr,” Crovitz said in an interview.

At a time when social media, podcasts and partisan outlets are displacing the mainstream media as news sources, the battle over NewsGuard’s future is symptomatic of a broader societal struggle over who gets to arbitrate the truth. And Carr’s letter potentially heralds a Trump administration prepared to wield state power to win that battle.

When NewsGuard launched, fighting disinformation was still a bipartisan battle. Revelations the year before that Kremlin-backed operatives had manipulated American social networks to mislead and divide Americans had shaken Silicon Valley and troubled Republicans and Democrats alike. Tech executives such as Facebook’s Mark Zuckerberg were lambasted by lawmakers in testy televised hearings for their failure to fight fake news.

NewsGuard  

@NewsGuardRating · [Follow](#)

A Russian disinformation network boosted the number of “pink slime” outlets — sites that present themselves as independent local news outlets but are instead funded by partisan groups — to 1,265, outnumbering the websites of 1,213 daily newspapers left in the U.S., according to [Show more](#)

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Despite the battering, tech giants didn't particularly want to play truth police on their platforms.

Crovitz and Brill offered them a solution: Pay NewsGuard to sift the real news sites from the propaganda peddlers.

"We're going to apply common sense to a problem the algorithms haven't been able to solve," Brill told "CBS Mornings" that year. "It's going to be very simple ... telling the difference between the Denver Post and the Denver Guardian, which is a hoax site."

Users of NewsGuard products — which include a free browser extension for Microsoft Edge and extensions you can buy for other major browsers — see each publisher's credibility score beside any link to its articles in search results or on social media.

A recent Google search for "government shutdown," with NewsGuard's ratings enabled, turned up articles from Rolling Stone magazine, which scored 87.5 percent; NBC's Austin affiliate, which scored 92.5 percent; and World Socialist Web Site, which scored 7.5 percent. Clicking on the rating for each brings up NewsGuard's assessment of the site. (World Socialist Web Site, it warns, is a far-left, for-profit enterprise that has "published false claims about the Russia-Ukraine War." Reached for comment, World Socialist Web Site spokesman Joseph Kishore said NewsGuard's rating "is not based on objective assessment but political prejudice against our socialist perspective.")

But if rating news sites seemed like a straightforward endeavor, navigating an increasingly fractured and partisan information landscape has turned out to be anything but.

Brand safety

NewsGuard landed a high-profile early client in Microsoft, which incorporated the company's credibility ratings into its Edge browser. Google, Facebook and other internet giants opted to use their own opaque algorithms to decide which sites and posts would rise to the top of users' search results and feeds.

Brill and Crovitz found more demand among online advertisers and brand safety groups looking for tools to ensure their ads don't run on scammy news sites or alongside bogus claims. While other such tools existed, including Integral Ad Science and DoubleVerify, NewsGuard stood out in the way that it publishes its assessments of media outlets.

In addition to its publisher credibility ratings, NewsGuard began tracking specific false narratives that it saw spreading across disreputable sites. Brill said NewsGuard keeps a "catalogue of provably false claims" — not matters of opinion, such as "abortion is bad," but definitively debunked factual claims such as "the moon landing didn't happen."

“There are advertisers that don’t want to advertise on a website that has articles saying that Dominion voting machines were rigged or the coronavirus vaccine will kill you,” Brill said in an interview.

Jason Kint, CEO of the publisher trade group Digital Content Next, said marketers need to assure brand safety. “Given the Wild West nature of the web, it’s important to have tools that can provide accurate data,” he said, to “avoid harm to the brand and weed out fraudulent and illegal sites.”

The rise of generative artificial intelligence has expanded the potential market for NewsGuard’s products. No major AI company wants its flagship chatbot parroting falsehoods it found on fake news sites. Brill and Crovitz declined to say which ones they’re working with other than Microsoft.

Six years after its launch, NewsGuard has attained what Brill called “sustainable profitability.” But he and Crovitz no longer enjoy friendly bipartisan audiences in Washington.

Instead, they find themselves a central target of Republicans’ wide-ranging war on content moderation — a practice many on the right deem censorship — with their reputation and their business at stake.

The ‘censorship-industrial complex’

During his first term, Trump routinely clashed with the mainstream media and social networks over their attempts to fact-check his statements, especially when he began contesting the 2020 election as fraudulent. After the attack on the Capitol on Jan. 6, 2021, the major social networks banned or indefinitely suspended Trump, earning his ire and stoking suspicion on the right that online content moderation was fundamentally a liberal plot to muzzle disfavored views.

That sense helped to motivate Elon Musk’s purchase of Twitter in 2022 and intensified with the publication of the “Twitter Files,” a series of tweets by a group of journalists Musk handpicked to comb through internal Twitter documents for evidence of overzealous content moderation and anti-conservative bias. Among the documents was a 2021 pitch to Twitter executives by NewsGuard, which Twitter Files co-author Lee Fang called “an opaque proxy for its government and corporate clients to stifle views that simply run counter to their own interests.”

When Republicans took control of the House in 2023, newly installed committee chairmen including Jim Jordan (R-Ohio) of the Judiciary Committee, James Comer (R-Kentucky) of the Oversight Committee and Roger Williams (R-Texas) of the Small Business Committee launched investigations into what they deemed censorship of Americans' views. Their targets included Big Tech companies, the Biden administration, misinformation researchers — and NewsGuard.

Williams's Small Business Committee produced a 66-page report in September on what it called the "censorship-industrial complex," which criticized the State Department and Defense Department for awarding hundreds of thousands of dollars in grants to NewsGuard. The report found that NewsGuard selects "winners and losers in the news media space" through its ratings and products for advertisers. It accused the company of bias for, among other things, giving high ratings to mainstream outlets such as the Associated Press and NPR that ran what the report deemed misleading headlines about Donald Trump's comments on the 2024 campaign trail.

Since Trump's election victory, some of his picks for top regulatory positions have made tackling online "censorship" a priority and cast NewsGuard as an emblem of the problem. His pick to succeed trustbuster Lina Khan as Federal Trade Commission chair, Andrew Ferguson, wrote in a December filing that he would support using antitrust laws to break up censorship "cartels," mentioning NewsGuard by name.

Carr's letter last month accused the tech executives of participating in "a censorship cartel that included not only technology and social media companies but advertising, marketing, and so-called 'fact-checking' organizations as well as the Biden-Harris Administration itself." In mentioning that the tech industry's prized liability shield, Section 230, only applies when they operate "in good faith," Carr suggested that working with NewsGuard might be putting that protection at risk.

NewsGuard has also been targeted by conservative regulators over its grants from the Pentagon to track disinformation efforts by Russia, China and Iran targeting Americans and U.S. allies.

Crovitz and Brill said they fought off an attempt by Congress last year to add a restriction to a key defense funding bill that would have barred the Pentagon from using NewsGuard. They believe that effort and Carr's letter followed inaccurate reporting about its work by right-leaning publisher Newsmax, which had expressed dissatisfaction with its low ratings from NewsGuard.

NewsGuard replied to Carr in a Dec. 10 letter, saying his letter cited factual errors about its work that had been reported by Newsmax. The claim that advertising firms use NewsGuard to censor conservative views, for instance, is belied by more conservative outlets being rated as credible than liberal ones, NewsGuard said.

Carr was also wrong about the companies that use its products, the company said. Of the four companies Carr wrote to — Apple, Meta, Microsoft and Google — only Microsoft has publicly acknowledged working with NewsGuard, though it declined to comment on that work for this article. Meta and Google told The Washington Post they do not use NewsGuard’s products.

Apple did not respond to requests for comment, and NewsGuard declined to say whether it works with Apple, citing a policy against discussing whether it works with specific companies unless those companies publicly disclose the relationship.

Reached by email, Carr said he had heard back from all four companies and had never assumed that all of them had ties to NewsGuard. “I wanted confirmation from the ones that I did not think worked with NewsGuard that they don’t actually work with NewsGuard,” he wrote. He said NewsGuard is purposely withholding information about its business.

“Suffice to say that NewsGuard’s response and its conduct since I raised these issues a few weeks back has only heightened and underscored my concerns,” he said. “NewsGuard’s response is a jumble of disinformation, deception and sleight of hand. In other words, it mirrors NewsGuard’s business model, in my opinion.”

Carr has not responded to NewsGuard's request for a meeting, Crovitz said, "apparently preferring to continue to rely on falsehoods to censor us." Brill said people on the Hill, whom he declined to name, told him Newsmax has been driving the Republican campaign against NewsGuard, offering legislators and regulators airtime whenever they criticize or take action against the company.

Reached via email, Newsmax chief executive Chris Ruddy called Brill "a longtime Democratic Party activist" and said: "Brill is free to make up any ratings he wants, but any business or ad agency that uses them is clearly taking political sides."

Jawboning

The kind of public pressure NewsGuard faces is making news a perilous environment for advertisers and their clients, industry insiders say.

"All of those companies have business with the government," said one former ad executive, who spoke on the condition of anonymity out of concern for retribution by the Trump administration. "Nobody's going to want to risk their ire. ... What marketers will end up doing is avoiding news entirely."

Musk, who has called NewsGuard “a propaganda shop that will produce any lies you want if you pay them enough money,” has already achieved that chilling effect. In August, his social media company X filed a lawsuit against the Global Alliance for Responsible Media (GARM), an industry coalition that develops brand safety guidelines, accusing the group of violating antitrust laws. Days later, GARM, which was led by the World Federation of Advertisers, shut down.

In October, another industry effort to encourage advertisers to buy ads on credible news outlets collapsed after one of the agencies involved got a letter from Jordan alleging their work could be illegal.

Some First Amendment experts say Carr leaning on tech companies to distance themselves from NewsGuard is closer to censorship than anything NewsGuard does.

Offering opinions as to news sites’ credibility, as NewsGuard does, “is emphatically speech,” said Ari Cohn, senior tech policy counsel at the nonpartisan Foundation for Individual Rights and Expression (FIRE).

“For Carr to write to the platforms and basically threaten them that if they utilize this protected expression he’s going to go after them is just First Amendment problem upon First Amendment problem,” Cohn said.

The irony, he added, is that it comes after four years in which Republican leaders criticized and even sued the Biden administration over allegations of “jawboning,” or applying undue government pressure to private entities to suppress speech. That’s exactly what Carr is doing now, Cohn argued.

Brill said the pressure from the right hasn’t cost the company any clients that he is aware of, but it has taken a toll on the company in other ways. Instead of focusing full-time on its misinformation research and news ratings, it has had to spend money on legal fees and time and energy explaining and defending its practices to politicians, clients and the public.

Crovitz had a more personal complaint about the criticism he has received from some fellow Republicans. “They refer to me as a liberal,” he said, “which I find to be slander.”

What readers are saying

The comments largely support NewsGuard's approach to rating news sites' credibility, viewing it as a necessary tool to combat disinformation. Many commenters express concern over the right-wing's opposition to fact-checking and disinformation research, suggesting that such... [Show more](#)

This summary is AI-generated. AI can make mistakes and this summary is not a replacement for reading the comments.

Exhibit 4

BREAKING NEWS

'Dawson's Creek' & 'Varsity Blues' Star James Van Der Beek Dies At 48: Obit, Career In Photos & Hollywood Tributes

HOME / BUSINESS / NEWS

Attacking The Watchdog: How Media Rating Site NewsGuard Ended Up As A Target For GOP Lawmakers And Regulators



By [Ted Johnson](#)

December 19, 2024 12:17pm





NewsGuard



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UPDATED, with [Newsmax statement](#) and [Brill response](#): As [Donald Trump](#) targets news outlets for new lawsuits, his choices to lead key regulatory agencies have a media watchdog in their sights.

[NewsGuard](#), a media reliability rating service launched in 2018, has been the source of claims made by Brendan Carr, incoming chair of the FCC, and Andrew Ferguson, incoming chair of the FTC, as well as Capitol Hill figures such as House Speaker Mike Johnson. Their claim: NewsGuard is out to “blacklist conservative news sources,” as Johnson put it in a statement last week.

But NewsGuard —along with a host of press freedom advocates — argue that not only are the attacks misguided, but they are, ironically enough, the very type of government pressure that threatens to chill speech protected by the First Amendment.

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“The Constitution protects the expression of groups like NewsGuard, which simply provide opinions on the credibility of content and information sources that other services may choose to adopt or ignore at their discretion,” Ari Cohn, lead counsel on tech policy for the Foundation for Individual Rights and Expression, or FIRE, recently wrote.

Watch on Deadline

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of journalists to review news sites and give them a score of 0-100, information that is used by consumers and clients including AI companies, search engines, news aggregators, brands and researchers. Advertisers, for instance, use the data to weigh brand safety, a bigger challenge in an age of programmatic placement.

Carr has long called out major tech platforms for what he sees as censorship of conservative voices, and has even characterized it as a “censorship cartel,” while citing a legal rationale for FCC authority over social media content moderation practices. Last month, in a letter to major tech companies, Carr claimed that NewsGuard was “leveraging its partnerships with advertising agencies to effectively [censor] targeted outlets.” Earlier this month, Ferguson also singled out NewsGuard in a statement, saying that it is “free to rate websites by whatever metric it wants. But the antitrust laws do not permit third parties to facilitate group boycotts among competitors.”

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NewsGuard, though, says that Carr and Ferguson are being misled in their attacks by one of the news outlets that scored low, Newsmax, rated 20/100 by their service. Newsmax recently settled a lawsuit brought by Smartmatic after it amplified claims that the election systems company help rig the 2020 presidential election.

When House Oversight Committee Chairman James Comer launched an investigation into NewsGuard and appeared on Newsmax last summer, one of its star personalities, Rob Schmitt, said “their goal is obviously to bully conservative media out of existence.”

Moreover, NewsGuard disputes the notion that they are going after conservative sites and not liberal ones.

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Responding to Carr’s claims last month, Crovitz emphasized that its service was apolitical and said that “many conservative sites get higher ratings from us than liberal sites get, such as Fox News getting a higher score than MSNBC and The Washington Examiner outscoring The New York Times.” He added that “Newsmax may not like our rating, but that is no excuse for them to validate their low rating with inaccurate claims about NewsGuard or to mislead Commissioner Carr.”

It’s not just Newsmax. Another outlet on the right, One America News Network, also claimed NewsGuard was part of a “radical left” effort to “shut down all opposition,” and it reported on Comer’s investigation into the media ratings service.

“The tack taken by two conservative and far right ones, OAN and Newsmax, has been to publish stories making false claims about our process, and to lobby members of Congress and regulators to threaten to censor us,” Crovitz said.

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“And then those members of Congress and regulators mysteriously Newsmax or OAN a scoop that they are coming after us and then they get on their television shows,” said Brill.

“I think about it as an unvirtuous circle,” said Crovitz.

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outlet. Newsmax accused DirecTV of a “blatant act of political discrimination and censorship.” Republican lawmakers spoke out against the satellite broadcaster, and even threatened to hold hearings, before a distribution deal was ultimately reached.

Newsmax did not respond to a list of questions, but said in a statement, “All you need to know about NewsGuard is that it was founded and headed by Steven Brill, a longtime Democratic party activist and donor and his ratings clearly reflect his political bias. Brill is free to make up any ratings he wants, but any business or ad agency that uses them is clearly taking political sides.”

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OAN did not respond to request for comment.

Brill, though, has spent a career in journalism, not politics. He called Newsmax’s claim “pure fiction — as accurate as Newsmax’s reporting about voting machines in the 2020 election.

“My only ‘activism’ for a politician was my work for a Republican mayor of New York when I was a law student. As a journalist I am probably best known for books taking down the Teamsters and teachers unions. When I was not a journalist, I have donated to both Republicans and Democrats. But what counts is that our rating criteria are apolitical and applied equally. Newsmax is bitterly upset that its score is nearly 50 points below Fox News.”

In a letter to Carr earlier this month, Brill and Crovitz have pushed back on other claims, including that NewsGuard rated that Chinese state media as credible, and that they judged the Covid lab leak theory as misinformation. Rather, they wrote that NewsGuard was just the type of service that Carr advocated for in Project 2025, the Heritage Foundation playbook for the next administration, rather than leave such selection up to major internet platforms.

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NewsGuard touts its service to advertisers as a way for brands to use their data “to craft custom news targeting or safety segments based on their standards. Advertisers can use NewsGuard’s more than 40 data and metadata points to create a campaign that matches their brand-suitability guidelines.”

(Full disclosure: Deadline, which also is rated by NewsGuard, received a 100/100 score.)

NewsGuard outlines how sites are rated and publishes complaints from publishers who take issue their reviews, and some outlets vigorously challenge their score. Among them: The leftward DailyKos and the Russian site Pravda.

One leftward site, Consortium News, sued NewsGuard last year, along with the U.S. government, alleging that a contract with the Department of Defense Cyber Command contract led to “a pattern and practice of labelling, stigmatizing and defaming American media organizations that oppose or dissent from American foreign and defense policy, particularly as to Russia and Ukraine.”

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Consortium News was given a score of 47.5 out of 100, with the NewsGuard Nutrition Label stating that it “frequently published false and misleading claims about the war in Ukraine and other important subjects.” NewsGuard said that it had “determined that the site repeatedly publishes false content and does not gather and present information responsibly.”

“As a private organization unaffiliated with the United States government, NewsGuard has a First Amendment right to form and disseminate its own opinions about the reliability and journalistic ethics of news outlets,” NewsGuard said in response the Consortium lawsuit.

NewsGuard also said that the government contract, which has ended, was not for its rating of news publishers, but a “fingerprints data” service that tracks false narratives being spread online by foreign governments.

Nevertheless, last year, amid GOP attacks on efforts to root out misinformation, a provision was placed into the defense funding bill that singles out NewsGuard and the Global Disinformation Index, placing restrictions on using their data when it comes to recruitment advertising. A similar provision was placed in this year’s bill. But Brill has said that NewsGuard does not have, and never has had, any advertising contracts with the U.S. government “in the first place.”

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over right-leaning ones.” But Crovitz has disputed the findings as a small sample of the more than 10,000 sites it has rated.

Whether NewsGuard has a political bias is also beside the point, as their critiques and ratings are protected by the Constitution, argue some free speech advocates, who also make another point: What poses a threat is when a government official uses the bully pulpit to threaten some sort of sanction.

Shortly after Carr’s attack on NewsGuard, Jacob Sullum, the senior editor at the libertarian site Reason, argued that the company would be protected by the First Amendment even if it “were systematically biased against conservative voices. But there is little evidence to support that claim.”

“It is certainly true that fact-checkers and news media analysts are fallible and may be biased, and there is no shortage of complaints about specific calls that NewsGuard has made,” Sullum wrote. “But the crucial difference between a business like NewsGuard and the government is that only the latter has the power to coerce compliance. People are free to evaluate NewsGuard’s judgments, accept or reject them, and act accordingly.”

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The offices of Carr and Ferguson did not respond to requests for comment.

Antitrust experts also are skeptical of Ferguson’s suggestion that NewsGuard has legal exposure when it comes to antitrust law. NewsGuard itself has challenged the notion that Newsmax has been the victim of an ad boycott, pointing to an investor presentation show advertising revenue is projected to grow by 228% since 2020.

Bill Kovacic, professor of law at Georgetown University and director of the Competition Law Center, said that the difficulty in proving a “conspiracy among rivals” antitrust case would be that NewsGuard was “coordinating an effort among the advertisers not to deal with” certain sites, and then to show that those advertisers “are agreeing among each other.”

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The challenge would be to prove that NewsGuard is “engaging advertisers as a group to take a certain path.”

NewsGuard’s Brill and Crovitz said that they are doing no such thing.

Brill said, “We’re not a licensee of the FCC. They have zero jurisdiction. If they had jurisdiction, what they would be purporting to penalize us for is for doing journalism. It’s like saying I am going to penalize Consumer Reports because it’s giving people information when they are looking to buy a toaster.”

He added that when it comes to brands, “We’re not telling them what to do, but to the extent that we are telling anyone what to do, we’re telling them to read our journalism so they can learn more about the reliability of news and information websites.”

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Exhibit 5

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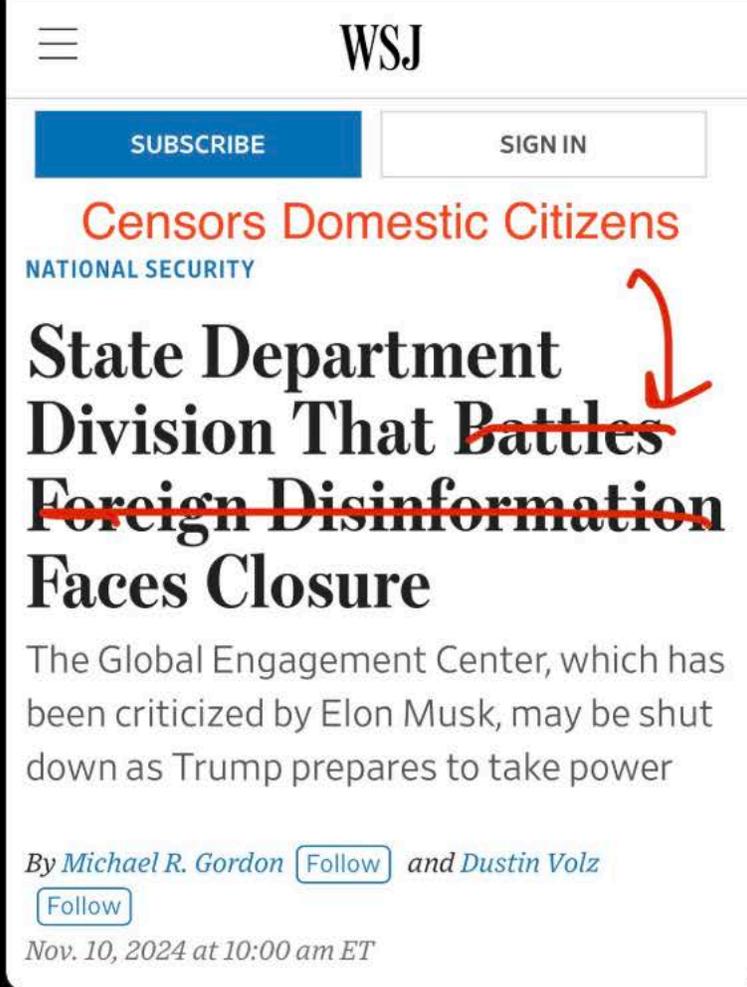
Big win for free speech. One of the major organs of the censorship industrial complex goes down.

No government agency should be in the business of policing speech. Nebulous terms like “misinformation,” “disinformation,” and “malinformation,” really mean any speech which goes against the elite consensus in DC and Silicon Valley.

In 2022, the FTC issued a report that praised the Global Engagement Center for “defend[ing] against foreign disinformation and propaganda,” and suggested the GEC was best “positioned to advise Congress” on how to counter disinformation. But Congressional investigations revealed the GEC funded the Global Disinformation Index and NewsGuard, which led collusive ad-boycotts—possibly in violation of our antitrust laws—to censor the speech of conservative and independent media in the United States.

 **Mike Benz**  @MikeBenzCyber · Nov 11, 2024

Oh no anything but that



The screenshot shows the top portion of a Wall Street Journal article. At the top left is a hamburger menu icon. The WSJ logo is centered at the top. Below the logo are two buttons: a blue 'SUBSCRIBE' button and a white 'SIGN IN' button. The article title is 'Censors Domestic Citizens' in red, with 'NATIONAL SECURITY' in blue below it. The main headline is 'State Department Division That Battles Foreign Disinformation Faces Closure' in large black font. A red arrow points to the word 'Battles', and a red line is drawn under 'Battles' and 'Foreign Disinformation'. Below the headline is a sub-headline: 'The Global Engagement Center, which has been criticized by Elon Musk, may be shut down as Trump prepares to take power'. At the bottom of the article preview, it says 'By Michael R. Gordon  and Dustin Volz '. The date and time are 'Nov. 10, 2024 at 10:00 am ET'.

8:51 PM · Nov 11, 2024 · 572.5K Views

 47

 473

 2.4K

 95



Exhibit 6

← Post



Andrew Ferguson ✓
@AFergusonFTC



@MikeBenzCyber is a tireless defender of free speech. I talked with him about how the FTC can combat censorship and promote innovation.



Mike Benz ✓ @MikeBenzCyber · Nov 24, 2024

I spoke today with @AFergusonFTC, who laid out a compelling vision for how the FTC can take on advertiser boycott collusion and Big Tech collusion in the Internet censorship space to protect consumers, promote market competition, and save free speech online.



29:05

9:33 AM · Nov 27, 2024 · **510** Views



Exhibit 7

Bannon's WarRoom, Show Clip Roundup 11/30/2024 [AM]

Episode 4093: Holding The Newly Elected Accountable and Episode 4094: Democrats Refuse To Accept 2024 Election Results



by **Kari Donovan** (<https://warroom.org/author/kdonovan/>)

— November 30, 2024 (<https://warroom.org/bannons-warroom-show-clip-roundup-11-30-2024-am/>)

in **SHOW NOTES** (<https://warroom.org/category/shownotes/>) Reading Time: 2 mins read

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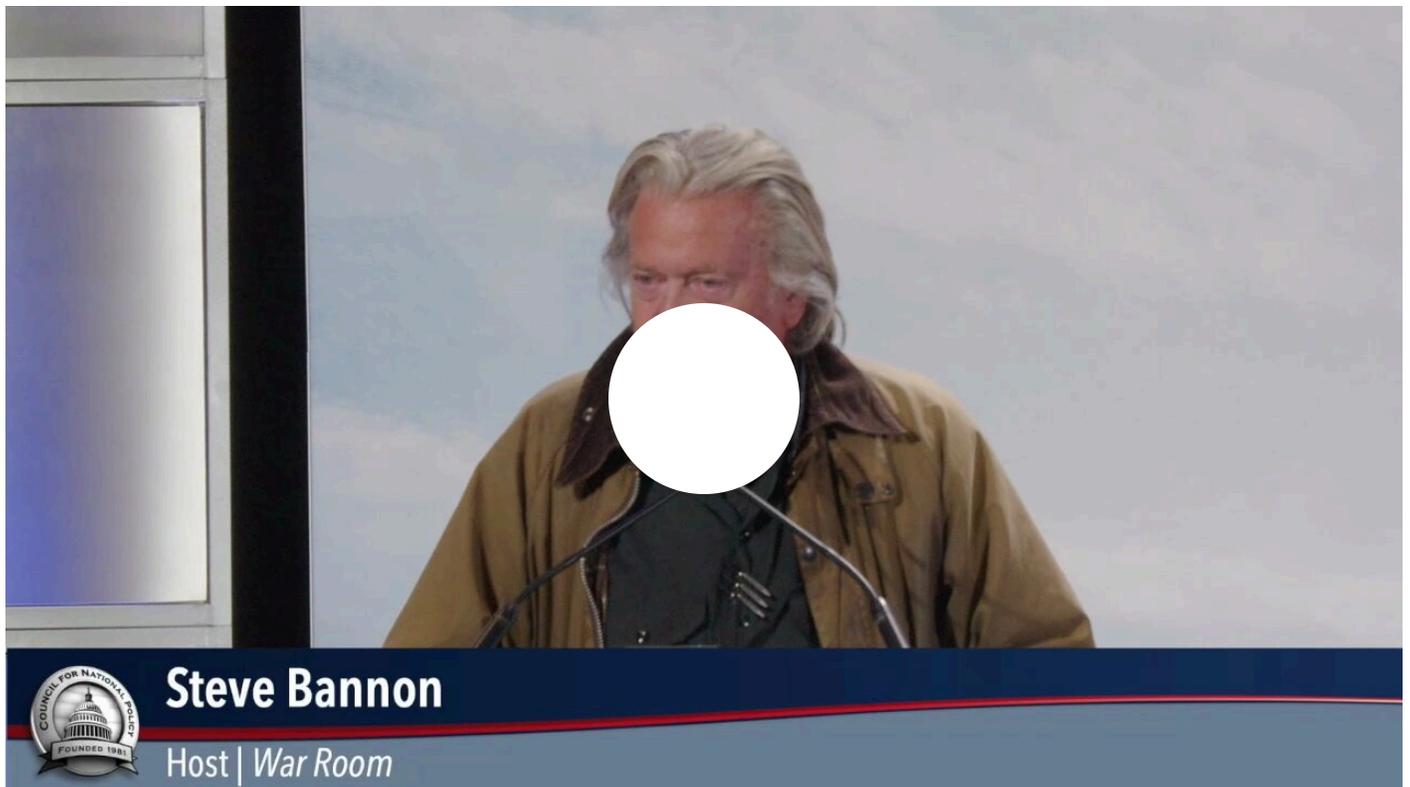
BEST OF BANNON SPEECHES | Steve Bannon Speaks To Council Of National Policy

Steve Bannon opened the Saturday morning WarRoom and played footage from his Nov 2024 Council of National Policy speech. In his opening, Bannon emphasized themes of turbulence, resilience, and historical significance in his commentary. He linked the resistance faced by President Trump and the MAGA movement to broader efforts to reshape the American government and economy. Bannon highlighted the importance of hedging against uncertain times, endorsing Birch Gold as a sponsor while promoting precious metals as a safeguard against instability.

In reflecting on his recent speeches, which he described as some of his best, Bannon shared a particular address delivered to the Council for National Policy (CNP), a prominent conservative

organization influential in policy-making. In this speech, he argued for President Trump’s place in the historical context, comparing him to figures like George Washington and Abraham Lincoln. According to Bannon, Trump comprehends his pivotal role in the nation’s trajectory and the public’s need to process the alleged 2020 election theft.

Bannon reaffirmed his belief that the election was stolen and criticized the left’s framing of democracy as the central issue. He conveyed an unwavering commitment to the MAGA agenda and Trump’s return to power, positioning these as part of a historical arc of transformative leadership.



Naomi Wolf Walks Through President Trump’s Picks For Health-Freedom Cabinet Picks

Naomi Wolf talked about her support of President Trump and the Cabinet picks he has made so far, focusing on Robert Kennedy Jr.



Darren Beattie Reveals How The Left’s Finally Confronting How Unpopular Their Message Is

Darren Beattie talked about the surprising creation of President Trump’s victory from the left. Beattie mentions several people who are very upset about President Trump getting back to the White House. He talked about the apparent internal conflicts these people had from being forced to accept that the American people had rejected their political message and were never as popular as the corporate media had led them to believe.



Ferguson Discusses How Trump Administration Can End Government-Enforced Censorship On Social Media

Andrew Ferguson, FTC Commissioner, highlighted critical issues around government-contracted NGOs and public-private collusion to suppress speech. He criticized government partnerships with platforms like Facebook and YouTube during COVID-19 and election controversies, where officials pressured platforms to censor “disinformation.” Ferguson called this Orwellian, emphasizing the First Amendment protects free speech from government interference.

He expressed concerns about advertiser cartels where companies collectively refuse to advertise on platforms that allow free speech. Such actions could violate antitrust laws designed to ensure fair competition. Ferguson urged a Trump administration FTC to investigate these practices.

He also discussed the “deep state,” a bureaucratic apparatus resistant to change and often misaligned with voter priorities. Ferguson stressed the need for personnel reform, stating, “Personnel is policy.” He advocated appointing individuals committed to transparency and aligning government actions with American interests.

Ferguson sees Trump’s re-election as an opportunity to redirect the government toward public interest. Ending censorship, investigating antitrust violations, and reforming the administrative state would ensure Americans retain their voice. “This country depends on the free exchange of ideas,” he said, underscoring that suppressing speech undermines democracy and the marketplace of ideas.



Previous Post

**The New American Revolution:
Bannon's Vision for a Populist
Resurgence [SPEECH]**

Next Post

**Andrew Ferguson's FTC Vision: Breaking
Censorship Cartels and Taming the Deep
State**

[\(https://warroom.org/the-new-american-revolution-bannons-vision-for-a-populist-resurgence-speech/\)](https://warroom.org/the-new-american-revolution-bannons-vision-for-a-populist-resurgence-speech/)

[\(https://warroom.org/andrew-fergusons-ftc-vision-breaking-censorship-cartels-and-taming-the-deep-state/\)](https://warroom.org/andrew-fergusons-ftc-vision-breaking-censorship-cartels-and-taming-the-deep-state/)

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Exhibit 8



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Brendan Carr
Commissioner

November 13, 2024

Mr. Sundar Pichai
Chief Executive Officer
Alphabet Inc.

Mr. Satya Nadella
Chief Executive Officer
Microsoft Corporation

Mr. Mark Zuckerberg
Chief Executive Officer
Meta Platforms, Inc.

Mr. Tim Cook
Chief Executive Officer
Apple Inc.

Dear Messrs. Pichai, Zuckerberg, Nadella, and Cook,

Over the past few years, Americans have lived through an unprecedented surge in censorship. Your companies played significant roles in this improper conduct. Big Tech companies silenced Americans for doing nothing more than exercising their First Amendment rights. They targeted core political, religious, and scientific speech. And they worked—often in concert with so-called “media monitors” and others—to defund, demonetize, and otherwise put out of business news outlets and organizations that dared to deviate from an approved narrative.

Congressional investigations, press reports, and other evidence show that in many cases you did not act alone. Rather, you participated in a censorship cartel that included not only technology and social media companies but advertising, marketing, and so-called “fact-checking” organizations as well as the Biden-Harris Administration itself.¹ The relevant conduct extended from removing or blocking social media posts to labeling whole websites or apps as “untrustworthy” or “high-risk” in an apparent effort to suppress their information and viewpoints, including through efforts to delist them, lower their rankings, or harm their profitability. This censorship cartel is an affront to Americans’ constitutional freedoms and must be completely dismantled. Americans must be able to reclaim their right to free speech. Indeed, our democracy depends on freedom of expression.

¹ Michael Shellenberger, *The Censorship-Industrial Complex, Part 2, Testimony Before the U.S. House Select Subcommittee on the Weaponization of the Federal Government* (Nov. 30, 2023), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/shellenberger_testimony.pdf; see also U.S. House Judiciary Committee, Interim Staff Report, *GARM’s HARM: How the World’s Biggest Brands Seek to Control Online Speech* (July 10, 2024) (“*Judiciary GARM Report*”), <https://judiciary.house.gov/media/press-releases/how-worlds-biggest-brands-seek-control-online-speech>; see also Letter from Mark Zuckerberg to The Hon. Jim Jordan (Aug. 26, 2024), <https://x.com/JudiciaryGOP/status/1828201780544504064>.

I am confident that once the ongoing transition is complete, the Administration and Congress will take broad ranging actions to restore the First Amendment rights that the Constitution grants to all Americans—and those actions can include both a review of your companies’ activities as well as efforts by third-party organizations and groups that have acted to curtail those rights.

For now, I am writing to obtain information from you that can inform the FCC’s work to promote free speech and a diversity of viewpoints. As you know, Big Tech’s prized liability shield, Section 230, is codified in the Communications Act, which the FCC administers.² As relevant here, Section 230 only confers benefits on Big Tech companies when they operate, in the words of the statute, “in good faith.”³

It is in this context that I am writing to obtain information about your work with one specific organization—the Orwellian named NewsGuard.⁴ As exposed by the Twitter Files, NewsGuard is a for-profit company that operates as part of the broader censorship cartel.⁵ Indeed, NewsGuard bills itself as the Internet’s arbiter of truth or, as its co-founder put it, a “Vaccine Against Misinformation.”⁶ NewsGuard purports to rate the credibility of news and information outlets and tells readers and advertisers which outlets they can trust.⁷ As the U.S. House Committee on Small Business 2024 Staff Report stated, “[t]hese ratings, combined with NewsGuard’s vast partnerships in the advertising industry, select winners and losers in the news media space.”⁸ NewsGuard does so by leveraging its partnerships with advertising agencies to effectively censor targeted outlets.

² FCC General Counsel, *The FCC’s Authority to Interpret Section 230 of the Communications Act* (Oct. 21, 2020), <https://www.fcc.gov/news-events/blog/2020/10/21/fccs-authority-interpret-section-230-communications-act>.

³ 47 U.S.C. § 230(c) & (c)(2).

⁴ See, e.g., Sandy Fitzgerald, *Rep. Comer to Newsmax: NewsGuard’s Methods Must Be Probed*, Newsmax (June 21, 2024), <https://www.newsmax.com/newsmax-tv/james-comer-newsmax-newsguard/2024/06/20/id/1169509/>; see also Letter from Rep. James Comer to NewsGuard, Committee on Oversight and Accountability (June 13, 2024), at 1, <https://oversight.house.gov/wp-content/uploads/2024/06/Newsguard-Letter-061324.pdf> (“The Committee on Oversight and Accountability is investigating the impact of NewsGuard on protected First Amendment speech and its potential to serve as a non-transparent agent of censorship campaigns”).

⁵ Michael Shellenberger, *The Censorship Industrial Complex*, Testimony Before the U.S. House Select Subcommittee on the Weaponization of the Federal Government (Mar. 9, 2023), <https://docs.house.gov/meetings/IF/IF16/20230328/115561/HHRG-118-IF16-20230328-SD012.pdf?ref=drishtikone.com>.

⁶ Lee Fang, *Meet NewsGuard: The Government-Backed Censorship Tool Billed as an Arbiter of Truth*, *The Federalist* (Nov. 15, 2023), <https://thefederalist.com/2023/11/15/meet-newsguard-the-government-backed-censorship-tool-billed-as-an-arbiter-of-truth/>.

⁷ The U.S. House Committee on Small Business, Interim Staff Report, *Small Business: Instruments and Casualties of the Censorship-Industrial Complex*, Report, at 42 (Sept. 2024) (“U.S. House Committee on Small Business, *CIC Report*”), https://smallbusiness.house.gov/uploadedfiles/house_committee_on_small_business_-_cic_report_september_2024.pdf.

⁸ *Id.*

NewsGuard also works with web browsers, including Google’s Chrome, Apple’s Safari, and Microsoft’s Bing. NewsGuard has partnered with social media companies. And it offers products for AI systems and app stores. In other words, your products may use NewsGuard or you may enable your customers to use NewsGuard.

But NewsGuard’s own track record raises questions about whether relying on the organization’s products would constitute “good faith” actions within the meaning of Section 230. For one, reports indicate that NewsGuard has consistently rated official propaganda from the Communist Party of China as more credible than American publications.⁹ For another, NewsGuard aggressively fact checked and penalized websites that reported on the COVID-19 lab leak theory.¹⁰ For still another, the Small Business Committee and multiple Media Research Center studies detail numerous instances where NewsGuard apparently does not apply its own rating system in an even-handed manner.¹¹ The list goes on.

Indeed, NewsGuard is the subject of an ongoing investigation by the U.S. House Committee on Oversight and Accountability for its impact on protected First Amendment speech.¹² And while NewsGuard claims that its mission is to provide apolitical guidance on “misinformation,” NewsGuard undercuts this claim by retaining on its Advisory Board at least one person that signed the now infamous October 2020 letter from former intelligence community officials that flamed the false claim that the Hunter Biden laptop story was Russian disinformation—a letter that itself fueled a wave of censorship.

To help inform FCC action, please provide me with the following:

1. A list of every one of your products or services (if any, including advertising) that use or rely on any NewsGuard product, service, or ranking.
2. A list of every one of your products or services (if any) that enables any of your users or customers to use or rely on any NewsGuard product, service, or ranking.
3. If you offer an advertising service, provide details on the use of any media monitor or fact checking service, including NewsGuard, that you may utilize.

⁹ See, e.g., Joseph Vazquez, *MRC Exposes NewsGuard for Leftist Bias Third Year in a Row*, Media Research Center (Dec. 12, 2023) (“Media Research Center Analysis”), <https://newsbusters.org/blogs/free-speech/joseph-vazquez/2023/12/12/mrc-exposes-newsguard-leftist-bias-third-year-row>.

¹⁰ *Judiciary GARM Report* at 26; see also Michael Shellenberger, *X Post* (Aug. 3, 2023), <https://x.com/shellenberger/status/1687141879014391809>.

¹¹ *U.S. House Committee on Small Business, CIC Report* at 44–48; see also Media Research Center Analysis.

¹² U.S. House Committee on Oversight and Accountability, *Comer Demands NewsGuard Disclose All Government Contracts Amid Censorship Concerns* (June 10, 2024), <https://oversight.house.gov/release/comer-demands-newsguard-disclose-all-government-contracts-amid-censorship-concerns/>.

4. If you use third party advertising or marketing agencies to enable advertising within or with your products, please identify the advertising or marketing agencies you work or partner with.

I appreciate your prompt attention to this initial request. It can help ensure that a true diversity of viewpoints can flourish in this country as envisioned by the First Amendment. Please provide your complete response by **December 10, 2024**.

Sincerely,

A handwritten signature in blue ink, appearing to read "B Carr", with a long horizontal flourish extending to the right.

Brendan Carr

Exhibit 9



Office of Commissioner
Andrew N. Ferguson

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Concurring Statement of Commissioner Andrew N. Ferguson
FTC v. 1661, Inc. d/b/a GOAT
Matter Number 2223016

December 2, 2024

I concur fully in the filing of this complaint and stipulated order and write separately only to address an issue raised in Commissioner Holyoak's thoughtful concurrence. My colleague urges the Commission to investigate online platforms for unfair acts or practices relating to their opaque, unpredictable processes for banning users and censoring content. She is right. President Trump himself asked the Commission in 2020 to investigate such practices.¹ When Americans' ability to engage in robust public debate on issues of national importance is at stake, no stone should be left unturned. The Commission should undertake these investigations.

Using Section 5 to enforce the penumbra of contract law is only one of many tools at our disposal. We should use all the tools we have. We should address not just censorious conduct specifically, but also investigate the structural issues that may have given these platforms their power over Americans' lives and speech in the first place. In particular, we must vigorously enforce the antitrust laws against any platforms found to be unlawfully limiting Americans' ability to exchange ideas freely and openly. We must prosecute any unlawful collusion between online platforms, and confront advertiser boycotts which threaten competition among those platforms.

Addressing potential structural problems is necessary even if the Commission successfully enforces the platforms' terms of service. Suppose that, in response to Commission action, the platforms honestly disclose their content policies and comply with them. Consumers could then choose to use platforms that provided free-speech-respecting products rather than those that do not. This would be an improvement over the status quo. But the choice would be real only if there are suitable free-speech-respecting substitutes to the censorious platforms. X right now is such a platform. But that is a recent phenomenon; X was once as censorious as the rest. Its current turn toward free expression is due only to its new owner's unusually firm commitment to free and open debate. Other online platforms remain far more censorious. Moreover, the major social media platforms may not necessarily be suitable substitutes for each other based on their characteristics and uses. They appear to occupy several unique niches, and a creator banned from one platform cannot count on earning a living by posting the same content on another platform.

Even if the various platforms are in some measure substitutes for each other, there is another problem. For years, the major speech platforms seemed to censor in lockstep. They banned dissent on the origins of COVID-19, mask mandates, the efficacy and safety of COVID-19 vaccines, transgenderism, and the integrity of the 2020 election. Every major speech platform—Snapchat, Facebook, Twitter, Instagram, and YouTube—banned President Trump roughly

¹ Exec. Order No. 13925, 85 Fed. Reg. 34079 (May 28, 2020).

contemporaneously in early 2021.² And this phenomenon was never more obvious than in 2020, when major Big Tech platforms simultaneously banned reporting on, and discussion of, the Hunter Biden laptop story.³

The antitrust laws generally do not forbid competitors from engaging in unilateral, parallel conduct—that is, identical or substantially similar conduct that occurs at about the same time but coincidentally.⁴ They do, however, prohibit agreements among competitors not to compete.⁵ If the platforms colluded amongst each other to set shared censorship policies, such an agreement would be tantamount to an agreement not to compete on contract terms or product quality.⁶ “[A]s far as the Sherman Act ... is concerned, concerted agreements on contract terms are as unlawful as boycotts.”⁷

The prospect of Big Tech censorship collusion is not merely hypothetical. Litigation has revealed the proclivity of some Big Tech firms to conspire on censorship policies. In *Missouri v. Murthy*,⁸ several States sued the United States and alleged that officials of the federal government coerced Big Tech firms to suppress “misinformation” on the platforms in violation of the First Amendment. “Misinformation,” of course, being Newspeak for ideas and speech inconsistent with progressive orthodoxy. The censored content “touched on a host of divisive topics like the COVID-19 lab-leak theory, pandemic lockdowns, vaccine side-effects, election fraud, and the Hunter

² *Which social media platforms have banned Trump and why? An overview*, FoxNews.com, Aug. 5, 2024, <https://www.foxnews.com/politics/trump-remains-permanently-blocked-from-snapchat-after-sequence-blockings-from-top-platforms-2021>.

³ Concurring and Dissenting Statement of Comm’r Andrew N. Ferguson, Regarding the Social Media and Video Streaming Services Report, Matter No. P205402, 9–10 (Sept. 19, 2024).

⁴ *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993) (“[C]onscious parallelism, describes the process, not in itself unlawful, by which firms in a concentrated market might in effect share monopoly power, setting their prices at a profit-maximizing, supracompetitive level by recognizing their shared economic interests and their interdependence with respect to price and output decisions.”); *Theatre Enters, Inc. v. Paramount Film Distrib. Corp.*, 346 U.S. 537, 541 (1954) (“[T]his Court has never held that proof of parallel business behavior conclusively establishes agreement or, phrased differently, that such behavior itself constitutes a Sherman Act offense. ... ‘conscious parallelism’ has not yet read conspiracy out of the Sherman Act entirely.”); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (dismissing Sherman Act Section 1 claim for failure to plead more than parallel conduct explaining “prior rulings and considered views of leading commentators,” are clear that “lawful parallel conduct fails to bespeak unlawful agreement.”). There are, of course, some prohibitions on unilateral conduct carried out by monopolists. See *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 767–68 (1984) (“In part because it is sometimes difficult to distinguish robust competition from conduct with long-run anti-competitive effects, Congress authorized Sherman Act scrutiny of single firms only when they pose a danger of monopolization. Judging unilateral conduct in this manner reduces the risk that the antitrust laws will dampen the competitive zeal of a single aggressive entrepreneur.”).

⁵ See *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 58 (1911) (Section 1 prohibits agreements that are “unreasonably restrictive of competitive conditions”).

⁶ Cf. *FTC v. Indiana Fed’n of Dentists*, 476 U.S. 447, 459 (1986) (agreement between dentists to refuse to submit x-rays to dental insurers for use in benefits determinations limiting consumer choice violated antitrust law because the argument “that an unrestrained market in which consumers are given access to the information they believe to be relevant to their choices will lead them to make unwise and even dangerous choices ... amounts to ‘nothing less than a frontal assault on the basic policy of the Sherman Act.’” (quoting *Nat’l Soc’y of Pro. Eng’rs.*, 435 U.S. 679, 695 (1978)); *Paramount Famous Lasky Corp. v. United States*, 282 U.S. 30, 36–41 (1930) (agreement between film producers to distribute films only subject to the terms of a standard contract including arbitration provision violated antitrust law).

⁷ *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 803 (1993).

⁸ 603 U.S. 43 (2024).

Biden laptop story.”⁹ The Supreme Court ultimately concluded that the States had failed to demonstrate that their speech was removed because of government coercion, as opposed to decisions made by the platforms of their own volition.¹⁰ But discovery in that case revealed the shocking extent of the collaboration between various organs of the federal government—including the White House, CDC, FBI, CISA, and State Department—and Big Tech firms to suppress dissident speech.¹¹ The record thus demonstrates that Big Tech firms were happy to work with others to determine their censorship policies—a point driven home by the Supreme Court’s conclusion that government coercion did not principally drive Big Tech censorship. If they were coordinating those policies with each other, they may have violated the antitrust laws.

There is another danger to free speech on Big Tech platforms that may fall within our antitrust bailiwick: advertiser boycotts. Shortly after Twitter (now X) was purchased by a free-speech champion, major advertisers raced for the door and refused to advertise on X. Concerted refusals to deal—also known as group boycotts—are illegal under the Sherman Act.¹² According to X, this mass advertiser exodus was concerted, and was facilitated by the World Federation of Advertisers’ Global Alliance for Responsible Media (GARM) initiative.¹³ GARM described itself as a coalition of “marketers, media agencies, media platforms, industry associations, and advertising technology solutions providers to safeguard the potential of digital media by reducing the availability and monetization of harmful content online.”¹⁴ According to the House Judiciary Committee, GARM may have been a conspiracy of major advertisers that facilitated boycotts of conservative and libertarian websites, podcasts, platforms, and political candidates in order to protect “brand safety” from “misinformation.”¹⁵ GARM ceased its operations in the face of litigation by X.

GARM’s dissolution, however, has not abated the risk of advertiser boycotts that raise Sherman Act problems. NewsGuard, for example, “is a domestic for-profit business that rates the credibility of news and information outlets and tells readers and advertisers which outlets they can trust.”¹⁶ Like GARM, NewsGuard claims to promote “brand safety” for advertisers. “NewsGuard leverages ‘human intelligence’ (journalists on staff) to dictate an outlet’s trustworthiness. Those deemed ‘untrustworthy’ are then compiled into ‘exclusion lists,’ with ‘trustworthy’ sites on

⁹ *Missouri v. Biden*, 83 F.4th 350, 259 (5th Cir. 2023) (per curiam), *rev’d*, 603 U.S. 43 (2024).

¹⁰ *Murthy*, 603 U.S. at 59–60.

¹¹ See *Missouri v. Biden*, 680 F. Supp. 3d 630, 645–89 (W.D. La. 2023).

¹² See, e.g., *Associated Press v. United States*, 326 U.S. 1, 9, 15–19 (1945) (bylaws of publishing agency violated antitrust law where they prohibited dealings with nonmembers and authorized members to block their competitors from obtaining membership); *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990) (group boycott violated antitrust law regardless of “[t]he social justifications proffered for [the challenged] restraint of trade”).

¹³ See Compl., *X Corp. v. World Fed’n of Advertisers*, 7:24-cv-00114 (N.D. Tex. Aug. 6, 2024). Rumble similarly filed suit, alleging such an unlawful conspiracy. Compl., *Rumble Inc. v. World Fed’n of Advertisers*, 7:24-cv-00115 (N.D. Tex. Aug. 6, 2024).

¹⁴ Interim Staff Report of the Comm. on the Judiciary U.S. House of Representatives, GARM’s Harm: How the World’s Biggest Brands Seek to Control Online Speech, at 1 (July 10, 2024) (quotation marks omitted), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-07-10%20GARMS%20Harm%20-%20How%20the%20Worlds%20Biggest%20Brands%20Seek%20to%20Control%20Online%20Speech.pdf>.

¹⁵ *Id.* at 2–4.

¹⁶ H. Comm. on Small Business, Small Business: Instruments and Casualties of the Censorship-Industrial Complex, Interim Staff Report 2024 at 42, https://smallbusiness.house.gov/uploadedfiles/house_committee_on_small_business_-_cic_report_september_2024.pdf.

‘inclusion lists,’ which are licensed to advertisers to instruct their ad agencies and ad-tech partners to keep their programmatic ads off/on these sites.’¹⁷ If a website gets a poor rating on NewsGuard’s “nutrition label,” it can choke off the advertising dollars that are the lifeblood for many websites—including platforms on which millions of Americans every day speak their minds.¹⁸ NewsGuard “goes to great lengths to create the appearance of nonpartisanship and objectivity,” but it seems to give a free pass to deceptive and biased news coverage by major left-leaning outlets.¹⁹ NewsGuard is, of course, free to rate websites by whatever metric it wants. But the antitrust laws do not permit third parties to facilitate group boycotts among competitors.²⁰

All of this is to say that Commissioner Holyoak is right to propose reviving President Trump’s Executive Order 13925. Doing so could promote transparency and honesty in how Big Tech treats its consumers. But I would not stop there. Censorship, even if carried out transparently and honestly, is inimical to American democracy. The Commission must use the full extent of its authority to protect the free speech of all Americans. That authority includes the power to investigate collusion that may suppress competition and, in doing so, suppress free speech online. We ought to conduct such an investigation. And if our investigation reveals anti-competitive cartels that facilitate or promote censorship, we ought to bust them up.

¹⁷ *Id.* at 43.

¹⁸ *Id.* at 43–44.

¹⁹ *Id.* at 43, 44–48.

²⁰ *Toys “R” Us, Inc. v. FTC*, 221 F.3d 928, 934–35 (7th Cir. 2000); *United States v. Apple, Inc.*, 791 F.3d 290, 319–20 (2d Cir. 2015) (“[I]t is well established that vertical agreements, lawful in the abstract can in context ‘be useful evidence for a plaintiff attempting to prove the existence of a horizontal cartel.’” (quoting *Leegin Creative Leather Products v. PSKS, Inc.*, 551 U.S. 877, 893 (2007))).

Exhibit 10

FTC Commissioner Andrew N. Ferguson for FTC Chairman

Commissioner Ferguson is the America First, pro-innovation choice for Chairman of the Federal Trade Commission. Ferguson has impeccable legal credentials, proven loyalty to President Donald Trump, and a track record of standing up to Big Tech Censorship, DEI-wokeism, and the anti-business, anti-innovation agenda of the radical left. President Trump can designate Ferguson as Chairman of the FTC on Day 1 of the Trump Administration – no Senate confirmation is needed for sitting FTC Commissioners to become Chairman, and his term does not expire until 2030.

Major Accomplishments

- Sued the Biden Administration to halt its lawless environmental, immigration, and gun policies.
- Directed Virginia Attorney General's efforts to bring down the Department of Homeland Security's "Disinformation Board."
- Represented Virginia and numerous other States in a landmark antitrust suit against Google's ad-tech monopoly.
- Successfully fought to end the Biden FTC's anti-business policy of refusing to end merger investigations early and allow firms to close their deals as soon as the FTC finds no competitive harm ("early termination").
- Oversaw the effort to confirm President Trump's judicial nominations in the Senate, transforming the Supreme Court as well as the lower courts. Lead staffer for both the Kavanaugh and Barrett nominations.
- Senate staff architect of President Trump's two impeachment acquittals.

Agenda for the FTC

Reverse Lina Khan's Anti-Business Agenda

- Repeal burdensome regulations and provide businesses with the certainty they need. Businesses deserve to know what they can and can't do.
- Support strong American companies that can beat foreign competitors. Foster innovation that improves our quality of life and makes our country greater than ever before.
- Stop Lina Khan's war on mergers. Most mergers benefit Americans and promote the movement of the capital that fuels innovation. Focus FTC resources on the mergers that harm competition and hinder innovation, while permitting mergers that keep capital flowing to innovators.
- End the FTC's attempt to become an AI regulator.
- No more novel and legally dubious consumer protection cases. Demand honesty and fairness to consumers, but businesses should not fear that the FTC will punish them for honest conduct that offends the sensibilities of beltway bureaucrats.
- Stop abusing FTC enforcement authorities as a substitute for comprehensive federal privacy legislation.

Hold Big Tech Accountable and Stop Censorship

- Focus antitrust enforcement against Big Tech monopolies, especially those companies engaged in unlawful censorship.
- Pursue structural and behavioral legal remedies under the antitrust laws and the FTC Act to make sure large platforms treat all Americans fairly and to prevent them from using their market power to box out new entrants and stymie innovation.

Biographical Highlights

- Solicitor General of Virginia
- Law Clerk to Supreme Court Justice Clarence Thomas. Also clerked on D.C. Circuit. B.A. & J.D. from the University of Virginia.
- Chief counsel for nominations to the Senate Judiciary Committee.
- Chief Counsel to Senate Majority Leader Mitch McConnell. Ferguson served as a strong voice that supported President Trump's agenda within McConnell's office.

Protect Freedom of Speech and Fight Wokeness

- Investigate and prosecute collusion on DEI, ESG, advertiser boycotts, etc.
- End Lina Khan's politically motivated investigations.
- Terminate all initiatives investigating so-called "disinformation," "hate speech" or AI "bias."
- End the FTC's attacks on online anonymity.
- Fight back against the trans agenda. Investigate the doctors, therapists, hospitals, and others who deceptively pushed gender confusion, puberty blockers, hormone replacement, and sex-change surgeries on children and adults while failing to disclose strong evidence that such interventions are not helpful and carry enormous risks.
- Stop pursuing cases under lawless disparate impact discrimination theories. Such cases are designed to force companies to adopt de facto quotas and affirmative action policies.

Fight the Bureaucracy to Implement President Trump's Agenda

- The Constitution requires that all federal employees, even the heads of so-called independent agencies, answer to the President.
- Terminate uncooperative bureaucrats.
- Advance the President's agenda by taking on entrenched left-wing ideologues at the FTC who take their agenda from liberal journalists and activists. Only a strong, Trump-aligned Chairman can resist their influence.

Excerpts from Ferguson's Statements on FTC Matters

Concurring and Dissenting Statement on the Social Media 6(b) Report ([link](#)):

» The Report says nothing about the **banning of politicians (including Donald Trump while he was serving as President of the United States)**, about the removal and demonetization of users who challenge the Silicon Valley political consensus, nor about one of **the most brazen acts of election interference in recent history: the coordinated suppression by social media companies of the Hunter Biden laptop story in the leadup to the 2020 presidential election.**

» We have seen what happens when social media companies prioritize their views—or the government's view—of “quality” over the preferences of their users. Over the past decade, these companies have enforced a restrictive censorship regime on Americans' online speech. **They have adopted Orwellian policies banning nebulous categories of content like “misinformation,” “disinformation,” and “hate speech”—categories that in practice mean only any content that challenges the Silicon Valley elite consensus on [any issue] where free thought is inconvenient to those in charge.**

» [Chair Khan's] Report also notes that many social media and video streaming companies have “inhouse experts, such as ethicists, social and political scientists, [and] policy experts” who are responsible for addressing “ethics, bias, inclusion, and fairness” in AI technology. [Khan's] Report suggests that this is a good thing and that the companies need more of them, preferably with binding authority over the rest of the company. **But the truth is that these AI safety groups, as they are often called, have proven to be little more than rebranded versions of the DEI bureaucracies that have infected America's businesses and colleges.**

» **Tacking on threats to the end of a report and calling them “recommendations” is not good government; it is bureaucratic bullying.**

Dissenting Statement In the Matter of Rytr LLC ([link](#)):

» The Commission's aggressive move into AI regulation is premature. ... Doomsayers warn that AI will take our jobs, hopelessly blur the distinction between fact and fiction, and maybe even threaten the survival of human civilization. AI companies do not forcefully resist all these claims, given that predictions about the incredible potential for AI may be useful as these companies compete for investment dollars and engineering talent. But the Commission should not succumb to the panic or hype. Generative AI technology is impressive, but it is also nascent. Neither its naysayers nor its cheerleaders really understand its potential, or whether it represents substantial progress toward “artificial general intelligence” (AGI)—machine intelligence matching both the breadth and power of the human mind, the holy grail of AI research. **That ignorance is not a reason to plunge headlong with aggressive regulation. It is a reason to stay our hand.**

» As our country has always done, we should give this industry the space to realize its full potential—whatever that turns out to be. America is the greatest commercial power in the history of the world in no small part because of its tolerant attitude toward innovation and new industry. **There has never been a better place in the world to have a new idea than the United States. We should go to great lengths to ensure that remains the case.**

Dissenting and Concurring Statement In the Matter of H&R Block, Inc. ([link](#)):

» The election of the President is thus the key to constitutional self-government for the executive branch. If the President supervises and directs subordinate officers, then the people control them because the President answers directly to the people. But if the President does not control subordinate officers, then neither do the people. The administrative state would rule the roost, governing in favor of its own interests without regard to the people's needs. ... The power to appoint is critical to setting the governing agenda. **The power to remove, and the obedience that the fear of removal instills, ensures the agenda's execution. The removal power is also the key to reforming the administrative state.** The President could hardly reform the government if he were stuck with the officers responsible for the problems he was trying to fix. And the removal power must extend beyond merely officers who openly disobey his orders. Subtle forms of disagreement and bureaucratic mischief can strangle policy reforms in their cradle. The President therefore must have the power to remove not just disobedient officers, but also those whom he concludes do not support his governing agenda.

Exhibit 11

NewsGuard Statement
November 15, 2024
Attributable to Gordon Crovitz, NewsGuard Co-CEO and
Former Publisher of The Wall Street Journal

The letter sent by Brendan Carr makes clear that he was misled by relying on false reports about NewsGuard from outlets like Newsmax that earn low credibility scores from NewsGuard. Newsmax gets a 20/100 score from NewsGuard, putting it in the bottom 15% of the more than 10,000 news websites we have rated.

Commissioner Carr's letter states, citing Newsmax, that NewsGuard favors censorship. This is false. NewsGuard was founded in 2018 explicitly as an alternative to government censorship or to continuing to rely on social media platforms' secret algorithms for rating news sources. We take the opposite approach: We apply nine transparent and apolitical criteria for rating news websites and our ratings are disclosed.

Our work does not involve any censorship or blocking of speech at all. Instead of blocking information, we provide users with apolitical reliability analysis. Instead of censorship, we provide users with more information – reliability ratings of news publishers based on apolitical criteria and a transparent journalistic process – so that each user can make informed decisions about which information to trust.

The key claims in the letter about NewsGuard are false, citing unreliable sources:

- The letter says that NewsGuard partners with ad agencies to "effectively censor" targeted websites, which it implies are conservative-leaning sites. However, ad agencies use our ratings to target *more* advertising toward news, and there are more conservative websites on our advertising target list than liberal sites. Among prominent conservative brands rated as credible by NewsGuard that, as a result, benefit from NewsGuard's products driving more advertising revenue to their sites are: Fox News, The New York Post, Townhall, The Washington Times, The Western Journal, The Daily Caller, The Washington Examiner, The Free Beacon, Hot Air, The National Review, Commentary magazine, the Heritage Foundation's The Daily Signal, and dozens of other conservative brands.

Indeed, many conservative sites get higher ratings from us than liberal sites get, such as Fox News getting a higher score than MSNBC and The Washington Examiner outscoring The New York Times. Again, Newsmax may not like our rating, but that is no excuse for them to validate their low rating with inaccurate claims about NewsGuard or to mislead Commissioner Carr.

- The letter also says that NewsGuard rates Chinese state media as credible while criticizing domestic outlets and that we have judged the claim that COVID-19 could have leaked from a lab to be misinformation. In fact, we do not rate any Chinese state media outlets as credible and have never rated a website as unreliable for publishing the lab leak theory, which, unlike many other entities, we have always found to be credible and not misinformation.
- The letter falsely suggests that we claim the Hunter Biden laptop was not his or that it was a Russian operation. We never made such assertions. Indeed, the only news sources whose reporting on the laptop we criticized were those that claimed it *was* a Russian operation and *denied* it was Hunter Biden's laptop.

Finally, we note that our journalism is itself speech protected by the First Amendment, and we're concerned to see a government official using the powers of his office, however unwittingly after having been misled by Newsmax, to attempt to prevent a private company (NewsGuard) from producing journalistic content.

There is an alternative to Newsmax misleading government officials in an effort to block independent ratings of Newsmax's editorial practices. Newsmax could instead join the thousands of other news websites that earned higher trust scores from NewsGuard by improving its basic journalistic practices. Indeed, our Newsmax Nutrition Label explaining our criteria and how we applied them provides a roadmap for Newsmax to improve its practices and join the many conservative-oriented and liberal-oriented sites that have increased their NewsGuard ratings by improving their credibility and transparency practices.

Exhibit 12

Request for Public Comment Regarding Technology Platform Censorship

The Federal Trade Commission invites public comment to better understand how technology platforms¹ deny or degrade (such as by “demonetizing” and “shadow banning”) users’ access to services based on the content of the users’ speech or their affiliations, including activities that take place outside the platform.² In doing so, technology platforms may employ opaque or unpredictable internal procedures to restrict users’ access to services, often without any advance notice, leaving affected users with little ability to mitigate the related harm. Users may also receive little information about the alleged violations that led to their dismissal or downgrading on the platform. Technology platforms may similarly deny their users a meaningful opportunity to challenge or appeal the platforms’ decisions. Such actions by technology platforms may violate their terms of service or other policies (collectively, “policies”) and flout users’ reasonable expectations based on the technology platforms’ public representations. Such policies and practices, which may affect competition, may have resulted from a lack of competition or may have been the product of anti-competitive conduct.

FTC staff is interested in understanding how consumers have been harmed—including by potentially unfair or deceptive acts or practices, or potentially unfair methods of competition—by technology platforms that limit users’ ability to share their ideas or affiliations freely and openly. FTC staff encourages members of the public, including current and former employees of technology platforms, to comment on any issues or concerns that are relevant to the FTC’s consideration of this topic, including, but not limited to, the following questions:

1. Under what circumstances have platforms denied or degraded (“shadow banned,” “demonetized,” etc.) users’ access to services based on the content of the users’ speech or affiliations?
 - a. What specific adverse actions did the platform take?
 - b. Did the platform take such adverse actions in response to its users’ speech or actions on the platform?
 - c. Did the platform take such adverse actions in response to users’ off-platform activities?
 - d. How and when, if at all, did the platform notify its users about such adverse actions or explain its decisions?
 - e. Did countervailing benefits to consumers or competition justify the platform’s decisions to deny or degrade its users’ access to services?

¹ Technology platforms may include, among others, companies that provide social media, video sharing, photo sharing, ride sharing, event planning, internal or external communications, or other internet services.

² Such potentially unlawful conduct affects not just any given speaker or potential speaker, but also consumers that would have otherwise received or had a higher likelihood of receiving the censored content.

2. At the time of the adverse actions, did the platforms have policies or make other public-facing representations about how they would regulate, censor, or moderate users' conduct on and off the platform?
 - a. Did the policies or other public-facing representations describe how, when, or under what circumstances the platform would deny or degrade users' access to its services?
 - b. Did the platform adhere to its policies or other public-facing representations?
 - c. Has the platform revised, updated, or changed its approach to regulating users' speech or actions or for denying or degrading users' access to services? If so, what, if any, revisions, updates, or changes have been made? How and when did the platform give notice of these revisions, updates, or changes to its users?
 - d. Has the platform acted in a consistent manner in response to analogous conduct by different users?
 - e. Were the platform's policies consistent with the internal or external statements of its executives and employees?
3. Did the platform represent, implicitly or explicitly, whether users had the ability to challenge or appeal adverse actions that deny or degrade the affected users' access to services?
 - a. Did the platform offer a meaningful opportunity to challenge or appeal adverse actions that deny, or degrade users' access, consistent with its users' reasonable expectations based on its representations?
 - b. How long did the platform take to adjudicate such challenges or appeals?
 - c. Has the platform applied a consistent challenge or appeals process in response to analogous conduct by different users?
4. How did the platforms' adverse actions affect users (including creators of content)?
 - a. How were users' ability to earn money or build followings affected?
 - b. Did competing technology platforms engage in analogous conduct against the same users?
 - c. Were users induced into joining and investing their time and money in a platform under the expectation of one set of moderation policies, only to have the rules changed from under them?

- d. Were users targeted by such adverse actions able to find adequate substitutes in other platforms?
 - e. Were users able to reach similar audiences and achieve similar goals (such as monetization and reach) on competing platforms?
5. What factors motivated platforms' decisions to adopt their policies or to take the adverse actions?
- a. Were they made in response to pressure from advertisers or other businesses?
 - b. Were they made in response to the actions of state, local, or federal governments?
 - c. Were they made in response to actions of foreign governments or other foreign entities?
 - d. Were they made to pursue the private interests of platform employees or executives, rather than the business interests of the platform?
 - e. Did platform employees or executives encourage, or collude with, outside parties to pressure the platforms to change their policies or take the adverse actions?
6. Were platforms' adverse actions made possible by a lack of competition? Did the practices and policies affect competition?
- a. Did platforms adopt similar policies to and take similar adverse actions as other platforms?
 - b. Did platforms agree or otherwise coordinate (including directly or through trade associations, certification bodies, or other means) with other platforms as to their policies and adverse actions?
 - c. To what extent have platforms funded or collaborated with organizations, for-profit or non-profit, that advocated for or enabled censorship? Were such activities, such as advertising boycotts, designed to facilitate collusion on censorship?
 - d. Were platforms able to achieve market dominance under permissive content policies, only to change policies after they had achieved market power?
 - e. To what extent did platforms use their dominance in other markets, such as search engines and app stores, to prevent competition from platforms with different moderation policies?

Comments must be received no later than **May 21, 2025 by 11:59pm ET**.

Instructions for submitting:

1. Go to the docket on regulations.gov
2. Click “Browse Documents”
3. Underneath the document containing the RFI questions, click comment (the blue button)
4. Fill out the form which requires:
 - 4.1.The comment text itself
 - 4.2.The comment category
5. You can submit as: an individual, an organization, or anonymous
 - 5.1.Optional: Attachments to aid your response. You can attach up to 20 files, but each file cannot exceed 10MB. Valid file types include: bmp, docx, gif, jpg, jpeg, pdf, png, pptx, rtf, sgml, tif, tiff, txt, wpd, xlsx, xml.

Please DO NOT include sensitive or confidential information in the comments including:

- social security numbers;
- dates of birth;
- driver’s license numbers or other state identification numbers;
- financial account information;
- sensitive health information; or
- competitively sensitive information.

Comments will be posted on the Internet and made available to the public (subject to exceptions such as for personal privacy information). Comments submitted in response to this RFI could inform the FTC’s enforcement priorities and future actions.

Exhibit 13

PROMARKET

Insights shaping the future of capitalism.

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Stigler Center
for the Study of the Economy
and the State

ANTITRUST AND COMPETITION EVENT NOTES STIGLER CENTER NEWS THE INFORMATION ECONOMY

Transcript: FTC Chairman Andrew Ferguson Keynote Part II

BY PROMARKET WRITERS April 21, 2025



Stigler Center event 2025 Antitrust and Competition Conference - Economic Concentration and the Marketplace of Ideas Dinner Keynote: Andrew Ferguson, Chairman, U.S. Federal Trade Commission April 10, 2025 (Photo by Anne Ryan)

The following is the second part to the transcript of Federal Trade Commission Chairman Andrew Ferguson's keynote at the 2025 Stigler Center Antitrust and Competition Conference. Part II includes Ferguson's interview with University of Chicago law professor Eric Posner and the subsequent audience Q&A. You can read part I, Ferguson's speech, [here](#).

Eric Posner

Thank you very much, Chairman Ferguson.

Your thesis is admirable in two ways. One is that it's so responsive to the topic of the conference, so I'm sure people appreciate that. And then the other is that it's extremely clear and crisp.

Let me summarize it like this. First, consumers want a free exchange of ideas. They go onto social media platforms in search of them. Second, the platforms (and I want to ask you about this) don't actually do that, or haven't done that. Instead, they've engaged in what you call censorious conduct, or content moderation, or they limit speech, however you want to put it. And therefore you're arguing that—I guess maybe presumptively, or you're claiming just as a matter of fact—the platforms aren't actually engaged in competition.

So, on the first: Is it true that consumers are actually, or users are actually going onto social media platforms seeking the free exchange of ideas? You mentioned that some go on to, like, have fun, to troll other people, maybe to torment or bully people. It also seems to be the case that people don't often want to actually hear the ideas of people who differ with them a great deal. So, what's the basis of your view? It sounds like an idealized view of how people behave, rather than the reality.



I do think it's the reality.

Even people who are pretty strictly aligned with one side or the other do derive pretty obvious pleasure from engaging—in good or bad faith, it depends—with ideas from the other side. I mean, I meant what I said: You can't troll unless there are people around that you disagree with. So, even someone who goes on just to, you know, bully, I'm not going to say harass, but even if someone is going on just because they want to pick on people they disagree with, you have to have access to those ideas, number one.

Number two, I think the reaction to the censorship epidemic of 2020, the public reaction, revealed a strong preference in favor of having access to ideas that you agree with, that you disagree with, or that you're not sure about. I think the success of X after it was purchased by someone who had a relatively open commitment to free speech, especially after everyone promised it was going to fail when it was originally purchased, is pretty good evidence that there's a preference for this.

Now, it's also obvious that, I don't think consumers want no-holds-barred access to everything, including categorically illegal stuff. It's definitely true that people like receiving some content more than others.

But I think it's equally true that the average consumer does not want a platform where particular ideas are just categorically excluded. If they did, you would expect there to be platforms where the curation was aimed exclusively and expressly to just one side or the other. I guess Blue Sky is a potential example, which has not exactly taken off.

I also think a lot of consumers began engaging with these social media platforms when they were quite openly touting their commitment to free speech and a free exchange of ideas, and then over time that commitment somewhat eroded. One of the things that the FTC, in this initial phase of the investigation, asked consumers to weigh in on was: What was your understanding of the terms of service for these platforms when you signed up on them; and then, was your being kicked off of these platforms inconsistent with their terms of service? A lot of these platforms had—often very flowery—commitments to free exchange of ideas in their terms of service, and a lot of consumers think that they didn't live up to them. President Trump, in 2020, actually issued an executive order asking the FTC to look into this. The FTC did not, but that's one of the things that we're examining now.

Eric Posner

Right, and I do want to ask you about that.

But first, a number of people have complained that Musk has kicked them off X, or deplatformed them or whatever the term is. And then, I'm not on X myself, but I gather that you can't really avoid Musk's, um, tweets or x's or whatever they're called. So, he starts off with, I think you're right, commitment to freedom of expression. He loosens the moderation rules. But what should we think about what's happening now? Is this evidence that there's not competition in this type of social media, the fact that he's deplatforming people?

Andrew Ferguson

I don't know, as an empirical matter, whether he's deplatforming people. I simply don't know.

I'm sure some people—as is true of every platform—are removed for violating terms of service. I also think it's very obvious that people are allowed to say and express ideas on X that you are not allowed to on other social media platforms. Facebook, for example, still has a vaccine misinformation policy. In terms of avoiding Musk's tweets, it might just be my algorithm that gives me ready access to them. He's also one of the world's most famous men, and is an important leader in the most important government on earth. I don't think it's terribly surprising that the algorithm would be putting his ideas in front of people. I don't think that suggests a competition problem, nor do I think the removal of any particular user does.



Eric Posner

I want to come back to this point about exchange of information, and something one of the speakers earlier today reminded us: network effects.

You would think that, if people want to exchange ideas, be exposed to new ideas, you'd want as big a platform as possible. And that seems to lead in the direction of monopoly.

How do you reconcile your view that the best use of a platform is exchange of ideas among as many people as possible; but your desire, as well, to have competition in the social media sector?

Andrew Ferguson

I do not think that a particular platform's propensity to censorship is categorically an indication of monopoly power, or is categorically an abuse of market power. Honestly, the sort of social media problem that has concerned me more before the purchase of X was the sort of eerie similarity of the censorship policies across all of these platforms, including the almost identically coterminous decision to eject Parler from the online world entirely at the exact same time, to get President Trump off of all the social media platforms within a couple hours of each other. The risk of collusion—which is made easier by an absence of competition—is what concerns me more, and I've written about this.

I don't think you said this, but if you did, just to clarify: The mere fact that a platform conducts censorship is not itself an indication of market power. The thing that concerned, I think, a lot of Americans in 2020 and 2021 was that all these platforms seemed to basically move in lockstep on a variety of social issues. The reality of this became even clearer once we had discovery in Murthy against Missouri. They all were adopting the same policies, often in consultation with the government or with, you know, lists of experts, and they all were using the same experts. That concerns me the most, is the idea of a handful of market participants. They're just going to agree on what contours their product will have. And when your product is the exchange of ideas, that's extremely dangerous.

Eric Posner

Right, right, and I did want to ask you about that. But, you quickly went from the... And as an antitrust lawyer, I'm sure you're thinking about this.

You quickly went from the fact that they were all doing the same thing at the same time, to the possibility that they were agreeing with each other to do the same thing at the same time. And, as you know better than anybody else here, or as well as anybody else here, parallelism occurs all the time in markets. It can be prices, it can be quality, it can be all the rest. It can be all kinds of things.

To use the examples you gave, one you mentioned, pushing Trump off the platforms. This was immediately in response to the election controversy.

Andrew Ferguson

Maybe.

Eric Posner

Well, I just mean as a temporal matter.

Andrew Ferguson



Right. It happened after. It does not follow it was a response. It is entirely possible that they talked to each other about kicking off the world's most famous man. And that's the issue I'm concerned about.

If there are only a handful, that sort of collusion is very easy. Or if there's a willing partner in the government to set, communicate amongst the various platforms, what the rules are going to be. It's very easy to do if there's only a small handful of them.

Eric Posner

So, you're worried that they might have entered into an agreement, but you don't have any evidence.

Andrew Ferguson

No. Nor did I say that. My contention is—same with the ejection of Parler—these decisions being made coterminously could just be conscious or unconscious parallelism. They could also be the result of collusion. Collusion is made easier if there are fewer participants. That is the concern that I'm discussing.

Eric Posner

Okay.

You also mentioned just now your concern that the government during the Biden administration pressured the social media platforms to, well, censor (as you would put it) or limit what people were saying about covid. Now, that doesn't sound like an antitrust problem.

Do you think that's an antitrust problem, if the government says to these platforms, Look, you're allowing speech on your platforms that is causing people not to get vaccinated, with the result that this epidemic is going to get much worse?

Is that an antitrust problem? Or is it a different kind of problem? Or is it not a problem at all?

Andrew Ferguson

I think it's a problem. It isn't necessarily an antitrust problem.

Murthy itself revealed two things going on. There was pressure applied. The court said it wasn't coercive for First Amendment purposes, but there's definitely pressure, consultation, collusion between the platforms and the government.

There also was repeated references to the record of all the platforms consulting with private outside experts on what the rules should be. That is potentially an antitrust problem, if there's an agreement among them that, "We're going to use these experts to help us set the rules."

Even if the sort of collusion, pressure from the government, isn't an antitrust problem, it is a problem for a civic society. And it is a problem made easier if there are fewer market participants.

If there's a wider smattering of market participants, it's harder for the government to get on the horn with everyone and pressure them equally. It's easier basically to buck the government because there are more people. It's harder for the government to apply pressure across the board. If there's just a handful of these companies that the government has to pressure, it's just easier to pull that off.

Even if that's not an antitrust problem directly—like, that *conduct* isn't an antitrust problem directly because of Noerr-Pennington or Interstate Act or whatever—I don't think it follows that we throw up our hands and say, oh well, antitrust laws can't address this directly.



Eric Posner

I read the Murthy opinion, and I guess I just had a different impression, so I'm curious. Maybe I missed... I read Alito's concurrence, which sort of lays out the strongest case.

I got the sense what was going on is, you have a bunch of government officials—probably panicking—talking to Facebook and a bunch of these social media platforms and saying: Look, there's a pandemic going on. People are dying. There's this misinformation being circulated, which we think is causing some people not to get vaccinated, which of course will harm other people, you know, through contagion. So, Facebook, please stop allowing people to share this information. It's causing as much harm or more harm than other types of policies that you have—against bullying or harassment or what have you.

Now, that just sounds to me like the government very strongly trying to encourage people in the private sector to act in a way that would advance the public good. Is that pressure? Is that unacceptable pressure in your view, for the government to say to these independent institutions, "We want you to do that?"

Or is there something else going on?

Andrew Ferguson

I think it depends on whose version you believe.

I don't know if you read the District Court opinion. The District Court's view was, this wasn't just, "Hey, do us a solid," or, "Do the country a solid." It was like, "Do it, or else."

Eric Posner

Yeah. What is the *or else*? That's what I didn't get. Like, what was the implicit threat, however you saw it?

Andrew Ferguson

I think it's the same threat that a government can always potentially inflict on any marketplace participant, which is, "We can make your life difficult." The regulators can show up, they can audit, they can investigate, they can cost you a lot of money, and the path of least resistance is: "Do what we say."

This is not dissimilar to the issue the Supreme Court confronted with the New York financial regulators calling up people and saying, "Quit doing business with the NRA, okay? Or else."

The *or else* is, "We have a tremendous array of investigative tools. Those tools are expensive when applied to you even if we don't win at the end of the day, so knuckle under."

The court's conclusion for state action purposes was, it wasn't sufficient to transform the social media companies into arms of the state. I just don't think it follows from that sort of doctrinal nicety that the problem isn't government officials backed with potential coercive power—formal and informal—calling up social media companies and saying, "The following ideas are to be proscribed. Proscribe them."

Having worked in the government a fair amount, I think that your view is either very charitable, or maybe a little naïve, about what happens on a phone between a private company and its regulator.

Eric Posner

So, the government shouldn't call up private institutions and tell them, "Do that, stop saying this, or we're going to punish you?"



I do generally think the government should not threaten private people with punishment because of things they're saying.

Eric Posner

Okay.

Andrew Ferguson

Unless they are criminal, yeah.

Eric Posner

All right, good to know.

[laughter]

Let's talk about the advertiser boycott issue, also.

You've said before that you're worried about... You think that advertisers colluded, or might have colluded, to boycott social media platforms that displayed speech that they didn't like. Could you tell us more about that?

Andrew Ferguson

I definitely did not say they *did* collude. I said...

Eric Posner

They *might* have, yes...

Andrew Ferguson

...that this risk is real and needs to be confronted and taken seriously.

Part of the way that people who have ideas get them out is, they make a living by propagating ideas. You are one of them. You get this incredibly protected job at the University of Chicago to, sort of, say whatever you want.

Other people participating in the marketplace of ideas can say what they want, as long as they can get the eyeballs to pay attention to them. And part of the way that you make sure you can keep getting the eyeballs is advertising. This isn't just true of social media platforms. This is true for a huge array of individual speakers who have views, both acceptable to the elites and dissident. Bloggers, YouTubers, people on X. All over the place. Part of the way that they get their ideas out there, and they can afford to keep getting the ideas out there, is if they can attract advertisers.

If advertisers get into a back room and agree, "We aren't going to put our stuff next to this guy or woman or his or her ideas," then that is a form of concerted refusal to deal. The antitrust laws condemn concerted refusals to deal. Now of course, because of the First Amendment, we don't have a categorical antitrust prohibition on boycotts. When a boycott ceases to be economic for purposes of the antitrust laws and becomes purely First Amendment activity, the courts have not been super clear. Sort of a "we know it when we see it" type of thing.

The concern I raised in that concurrence—with which I am deeply concerned—is, if advertisers either get in a room together and say, "We're not going to do advertising next to this idea," or they say, "We're going to agree that this third party decides which



ideas get advertisement and which don't; we're just going to let *them* do it," then we are going to dry up the idea because we are drying up the person who has the idea's ability to make money off of that idea.

Unless those people can get tenure, they need to keep attracting eyeballs because that's how they make a living. Drying up the advertising will dry up the idea. So, the risk of an advertiser boycott is a pretty serious risk to the free exchange of ideas.

Eric Posner

Just parenthetically: Having tenure does not guarantee you any eyeballs, I'm afraid. We write for a very small...

[laughter]

Andrew Ferguson

That's right.

Eric Posner

Just a few pairs of eyeballs...

Andrew Ferguson

Although, having gone to law school, I know they pay a lot to see and hear you, so...

Eric Posner

Yeah, well that's true. Again, though, I just want to press you on this a bit.

We see parallel conduct. We see a bunch of advertisers who are worried about their brand. And, as rational economic actors, they don't want their advertisements to be on a platform that people associate with stuff they abhor, whether on the left or on the right. So, just seeing them pulling their ads from platforms that host offensive speech in whatever way, you know, it could be just speech that the advertiser itself doesn't like. That's not a problem. It's only if they get in the back room.

But when we talk about advertisers, we're talking about thousands of companies around the country. Or around the world. There's no back room that they could all fit in together. Is it plausible at all that they engage in collusion?

You mentioned also that they consulted with third parties. It would seem to me this is just business as usual. There are third parties out there that study brand management and how people react, how the affiliation, association of an advertisement with a particular type of speech might affect business. What's the basis for actually trying to investigate in this kind of setting?

Andrew Ferguson

Can they all get into a back room and agree? Having represented trade associations, the answer is yes.

Have they? I don't know. No one's looked at it. At least, no one has publicly looked at it. But is this a possibility? Of course, number one.

Number two, there are lots of advertisers, but they tend to use a small handful of advertising agencies to make a lot of these decisions for them. There also are a lot of advertisers, but there aren't that many *huge* advertisers. And a decision by a bunch of huge advertisers to cut off access could have massive downstream economic effects on speakers who need access to advertising.



Again, you know, I don't think you're saying this. The fact that there is coterminous identical conduct—this is true across all of antitrust law—does not mean there's an antitrust violation. Where there is smoke, there is not always fire. But there might be. And the whole point of having the antitrust enforcement agencies is, when you see smoke, at least take a look.

For example, this could have been for a number of reasons but, one of the most prominent, you can call it brand safety managers if you want, was GARM. They confronted a single antitrust lawsuit from X and dissolved almost immediately. It doesn't follow necessarily that they were committing the antitrust violations that they were accused of. But I do think that this risk is sufficient enough and, if it got really bad, would dry up enough access to ideas that it is incumbent upon the antitrust enforcers to take it seriously and, if they think there's something there, to look at it.

Eric Posner

Okay, I have one more question (and then we're going to take questions from the audience, so please get your questions ready).

In your remarks, you mention this kind of ideal of people exchanging ideas on platforms. Basically, you said you don't like censorship, but you've also acknowledged that there needs to be *some* kind of regulation; or am I wrong about that? This strikes me as an important question because of your willingness to infer, from limitations on speech, that there might be a competitive problem.

At what point do we become suspicious of a social media platform? You've said, I think, that they could, like, block illegal behavior, like child pornography or something like that. But if they, you know, genuinely think that their users are offended by holocaust denial or conspiracy theories or what have you, what do you... Are you saying that if they implement *any* kinds of limitations, that's bad for society? It's bad for the marketplace of ideas? And it suggests that they must be driven by anti-competitive goals?

Andrew Ferguson

No, I do not think that the imposition of *any* limitations is bad for society.

Eric Posner

So, I just want to ask you, what are those limitations?

Andrew Ferguson

I think it can vary from platform to platform. And I think, frankly, in a good competitive environment, we would expect some variation from platform to platform. Nor do I think that just the act of content moderation is itself evidence of a competitive problem.

But if any company is doing stuff that quite actively drives huge swaths of its consumers off its platform, and doesn't seem to suffer competitive consequences—ad revenue doesn't come down, what have you—that is at least a suggestion that there might be a competitive problem. The FTC, and the government generally... Actually no, not generally. The entire government is not the censorship police because it would be very difficult for the government to be the censorship police without winding up doing a lot of its own censoring.

But I do think that if there are businesses who are doing stuff that drive either a huge swath of their users or their preferences off of their product, and that nothing seems to happen to them—they don't suffer any competitive consequences, they get bigger, they get more profitable—there's at least evidence that competition is not thriving in the space. But it can't be—and it isn't—that every time a company decides to censor, or content moderate, whatever you want to call it, that the antitrust enforcers need to show up. I just disagree with what seemed to be the long-held position by many, which is that this isn't evidence of a potential antitrust problem at all. I think it is.

Eric Posner



And just a quick follow-up. Was it actually the case, when Facebook and other social media platforms increased the limitations on speech, that lots of people left those platforms.

Andrew Ferguson

People left. It also got... Use of these platforms became super politicized, which is exactly what a lot of these platforms said they were trying to avoid. Facebook acknowledged in January of this year that it had been downgrading all political content, had been trying to keep it—across the board—suppressed. There’s evidence that that isn’t actually what was happening, but it’s sort of neither here nor there. It became this extremely political product at the same time.

They did not lose many users, even as the public impression and public polling about favorability of these platforms plummeted in 2020 and 2021. That doesn’t necessarily demonstrate... That isn’t the proof in the pudding. It doesn’t make the case. But when you are enforcing antitrust laws, you don’t show up at an antitrust problem when the case is fully baked and you just go. You’re constantly looking for smoke to see if there’s fire. And in my view, this is absolutely smoke, at least in some circumstances.

Eric Posner

Okay, questions. Yes, over there.

Audience Member 1 (Luigi Zingales)

Thank you, chairman, for your speech.

I’m very fascinated by your approach to collusion, or potential risk of collusion. That seems to be quite novel, and I really endorse it. If there is smoke, take a look! Last year in this conference, I was asking people:, There seems to be a coordination in not publishing information about the famous Hunter Biden laptop; why is there not an antitrust enforcement on this issue? Because that’s really a serious issue.

I hope that you apply the same rule across the board. There are a lot of potential risks of collusion, a lot of cases where there is smoke. If you take a look in all those cases, this would be the most interesting four years ahead of us.

Let me give you a suggestion, for example. In a lot of industries, not only are there trade associations, but there are also consultants. They play a role in giving the same suggestion to everybody. A colleague at a different university told me that he was, in a former life, a consultant. He went to a bank and suggested that this regional bank should increase their fees. Then the regional bank, what they did is they actually recommended him to all their other competitors. So he went to all the competitors, and they all increased their fees.

Unlike in the case of newspapers, where we maybe see the evidence, in the case of consultants, we don’t—because they don’t actually publish who they consult for. So I hope you look at the smoke, ask all the consultants to publish a list of who they consult for, and look into that.

Andrew Ferguson

I didn’t hear a question, but I can comment nonetheless. Two things.

My view of the antitrust agencies is that they’re cops on the beat. You’re supposed to walk around the markets, and if you see something that looks like trouble, you take a look. You don’t prejudge, but you take a look.

On the collusion thing, obviously, collusion under antitrust laws requires some agreement on something. Trade associations play a valuable role, but there’s a pretty long history of trade associations that can act as third-party facilitators of horizontal conspiracies. I think that there is a risk that that can be taking place in the advertising markets. It’s definitely not the only market where there’s a possibility of that, and I’m always interested in looking for the smoke.



To be clear: Sitting in Washington, or even with our regional offices scattered throughout the country (we've got one here in Chicago that I just came from), we can't see it all. So, part of the role of people like you is to alert the agencies when something's going on. We get complaints—of varying levels of politeness—about things happening in the market, including from some people sitting in the room right now. And they are often very helpful because it won't be obvious to us, as we're all looking where we're looking, about what's going on. So this is helpful.

Eric Posner

Yeah, Matt?

Audience Member 2 (Matt Stoller)

Thanks for the speech and the questions. I guess I have a question about your broad observation that consolidation can lead to certain forms of coordinated speech restrictions.

One of the things that I've heard a lot of when I go out to LA is, there's a lot of fear of talking about China—particularly because of vertically integrated streaming systems that are highly consolidated.

The government actually put out reports in the mid-2010s, and you hear it all the time. You haven't seen a Chinese villain in movies for a long time. There are a number of reasons for this.

How would you approach looking at a problem of consolidated, vertically integrated speech platforms (for lack of a better word) outside of the sort of partisan approach? Looking at something like Chinese control over Hollywood, which is more of a national security question?

Andrew Ferguson

What I said in my confirmation. It is not the role of antitrust law, or of antitrust enforcers, or frankly of government to ensure some particular quantum of competitors in a market. We're going to end up with central planning, which is going to be worse than whatever we have now.

But I do think that we ought to care about consolidation, independent of the particular doctrines of antitrust law, because it is much easier for government to control what you think, believe, and do, and what I think, believe, and do if there are a limited number of suppliers above us. It's just much easier for them to coerce a couple people than it is a bunch of people. It just categorically is, and that's true of any government. I think vigorous antitrust enforcement that protects against consolidation and leaves a variety of suppliers makes it harder for the government to coerce you and me downstream by coercing the people we rely on for stuff.

How I would think about the particular problem of vertically integrated movie studios and streaming services and China? I don't have a particular answer on that, just because I think there are potentially fronts to think about antitrust law and our competitiveness vis-à-vis foreign rivals. That isn't generally how antitrust law has constructed it, although I do think there are interesting antitrust theories about whether a merger that would give a foreign government more control over a particular industry should matter to the merger analysis. I'm open to that prospect. Generally it isn't traditionally what antitrust law has said, but that's at least an interesting line of inquiry.

My view is, antitrust law does not... Its job is not just to be anti-consolidation and make sure there's a certain number of competitors. If you've got vigorous antitrust enforcement, you can resist consolidation and therefore resist the coercion of the individual or of the family downstream from coercing the supplier. That's the thing that makes me very nervous about a limited number of suppliers of anything. I mean, de-banking has become this catastrophic problem in this country, where people are being denied access to retail banking services, on the basis of things they say or believe or affiliations. If you've only got a small number of very large banks, and the government has a particular view on whether someone's idea should be permitted in the marketplace, it's a lot easier to drive that out of the marketplace if all you have to do is have the banking regulator call a couple banks and be like, "We don't like people who have these views banking with you." Which is almost exactly what happened in the NRA against Vullo case, with New York's banking regulator just calling financial institutions and being like, "You do business with



the NRA, I'm coming for you." That is an easier maneuver to pull if there are a fewer number of people involved in the market. It's a lot harder if there are a wide variety of participants.

That is one of the reasons that I think, even for libertarians on my side of the aisle who are focused more or mostly on the relationship between government and the citizen, you ought to care about antitrust law because the government has a hard time directly coercing 350 million people but a lot easier time coercing six or seven suppliers that all 350 million of us have to interact with.

Eric Posner

Yes, back there.

Audience Member 3

On the topic of speech, I appreciate your remarks.

Other members of your administration have broadly suggested that there hasn't been enough crackdown on speech—particularly at protests on campuses, and other forms of speech at college campuses. Now, obviously, you're an independent agency. You're free to express your own views.

I'm curious whether we can take it that you're with the university leaders, like Princeton's Eisgruber, who think it's important to protect freedom of expression of all points of view—no matter what—at places like college campuses?

Andrew Ferguson

I'm not sure exactly what the question was.

Audience Member 3

The question is whether you believe the freedom of speech principle extends to the rights of protests on campuses, and therefore you stand *with* universities and *against* other parts of the administration, who have threatened universities and suggested they should crack down on speech.

Andrew Ferguson

I am not aware of universities suggesting that there be a crackdown on speech. I am aware of the suggestion that universities should not make it so that students fear for their physical safety when they're crossing campus on the basis of their religion, and I definitely agree with that.

I think that the value of free speech is fundamental to this society, but the right to speak does not include the right to intimidate on the basis of someone's religion, to harass, whatever you want to call it.

I am quite firmly of the view that I'm a member of the most free speech administration of my lifetime. And I'm extremely proud of that fact.

Eric Posner

Yes, right over here.

Audience Member 4 (Barry Lynn)

Hi, this is Barry Lynn. I agree with a lot of what you said. Our organization a few years back, just as a for instance, we condemned Facebook for knocking Alex Jones off the platform, may he burn in hell. We condemned AWS for knocking Parler off. But I have a



So, amplification by the platforms. Because all amplification means is that other people's voices are being obviously put down, in the order at which they're being presented to an individual. Is amplification a problem? Is it a form of censorship?

And then the second thing is, you mentioned the Biden administration during the pandemic for putting pressure on the platforms. Last August, at that point former president Trump threatened—in writing—Mark Zuckerberg with life in prison unless he did the right thing. Was that a wrong thing for Donald Trump to do when he was running for office?

Andrew Ferguson

Is amplification a form of censorship? No. I think throwing someone off of a platform because of the view they express is a form of censorship. Also, you know, not the greatest example of civic discourse, to just shout out someone burning in hell. I don't love that. I agree with you that they shouldn't be throwing off people just on the basis of the views that they articulate.

Audience Member 4 (Barry Lynn)

The second thing, about President Trump?

Andrew Ferguson

I don't remember him saying that, so I don't have any comment on that.

Eric Posner

Over here?

Audience Member 5 (Maciej Bernatt)

I have a question.

When the agency is considering entering into new areas—and I think free speech would be one in the US—then potentially the institutional guarantees matter.

So I wanted to ask you about your view on the independence of competition agencies in a context of actions such as the one you discussed, that potentially there might be smoke.

Andrew Ferguson

Sure. I've made my view on this extremely clear, a lot.

I think that the idea of independent organs of executive power is very difficult to square with democracy. When we vote for the president, we're voting for the person who's going to be in charge of the entire executive branch. I guarantee that almost no one in this room would want me to be able to wield executive power free of political accountability. I guarantee no one in this room would want that. And I don't think, in a democratic society, any of us should want very powerful agencies like the FTC to be insulated from political accountability.

My view is that any agency that wields substantial executive power in the name of the American people has to be answerable to the American people. And the way that the executive branch in this country, under our form of government, is answerable to the American people is through the election of the president.

And so my view, which I've said over and over, is that the president has the constitutional authority to remove commissioners of the FTC, including me. And I am extremely confident that when this gets to the Supreme Court—which it is, I guess, there right



Eric Posner

I think we have time for one more question. Yes, right over there.

Audience Member 6

Thank you. Andrew, can I ask you a question?

Andrew Ferguson

Sure.

Audience Member 6

As FTC commissioner responsible for protecting consumers—and especially vulnerable populations like children—from unfair practices, do you believe that it’s in the public interest or in the interest of children themselves for our kids to be on social media platforms designed to capture their attention and monetize their data?

Andrew Ferguson

That is a good question. This is the subject of a roaring debate. The commission is going to host a full-day workshop on this question, where we’re going to bring in scholars and advocates in a series of panels and speeches and debates to address this question.

I think it has become very obvious that the relationship between children and social media is not a healthy one. It’s not healthy for them; it’s not healthy for the country. There are very good arguments that advertising targeted toward children is bad in every circumstance. Congress is going to have to make decisions on this. But I do think that we are headed towards a reckoning on the relationship between children and social media, and the effect that social media has on forming brains, with a product that is designed to get a dopamine drip going over and over and over again.

States are starting to address this. Congress has started to address this. Even under current laws, there are parts of this that government can address. The laws that I enforce were written in 1914 and 1938. The problem we’re confronting is quite new, so we need to be very careful about how we apply these old laws to new circumstances and not just blunder in, sight unseen, to address what is a real problem. But I do think it’s a real problem. Clare Morell wrote *The Tech Exit*. I think it is phenomenal; it’s also terrifying. She’ll be one of the participants in our workshop. But this is an issue that keeps me up at night. The relationship between children and social media. The difficulty that every parent in America has, regulating their child’s interactions with social media.

My own view—stated at a relatively high level of abstraction—is that the most important thing the government can do is interpose parents back between children and social media. That’s the healthiest response, rather than government interposing itself directly between children and social media. But parents need help. Children get to interact with social media outside of their parents’ presence almost constantly. Screens are everywhere in our schools, whether you like it or not. Even if you are a family who has cut off access to screens to your kids, their friends parents probably have not, and they’ll have access to it there.

Government needs to do something about this. I think the main thing it needs to do is put parents back in charge of their kids and make it easier for parents to interpose themselves between their children and social media.

Eric Posner

Thank you. Well, I’m afraid we’re out of time, sorry. But please join me in thanking Chairman Ferguson for joining us.



Articles represent the opinions of their writers, not necessarily those of the University of Chicago, the Booth School of Business, or its faculty.

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2. [Transcript: FTC Chairman Andrew Ferguson Keynote](#)
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Exhibit 14



Brendan Carr 
@BrendanCarrFCC



Whether it's the government shutting down speech (a 1A issue) or a private platform doing it (not 1A), these decisions aren't made by an oracle of truth.

It's always a person in power (merely fallible or with a political agenda) that censors speech.

More speech > Less speech

9:47 PM · Apr 15, 2020

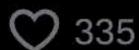


Exhibit 15



Civil Investigative Demand

1. TO NewsGuard Technologies, Inc. 25 W. 52nd Street, 15th Floor New York, NY 10019	<div style="border: 1px solid black; padding: 5px;"> <input type="checkbox"/> 1a. MATTER NUMBER FTC File No. 251-0061 </div>
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This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

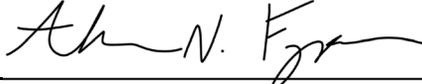
2. ACTION REQUIRED <input type="checkbox"/> You are required to appear and testify.	
LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE No appearance required.
	DATE AND TIME OF HEARING OR DEPOSITION

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE
30 days from the Issued date below - June 19, 2025 by 5:00 pm ET

3. SUBJECT OF INVESTIGATION See attached.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN Helder Agostinho, Deputy Assistant Director	5. COMMISSION COUNSEL Justin Epner, Attorney
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DATE ISSUED 5/20/2025	COMMISSIONER'S SIGNATURE 
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INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCSRulesofPractice>. Paper copies are available upon request.

Civil Investigative Demand to NewsGuard Technologies, Inc.

**CIVIL INVESTIGATIVE DEMAND
ISSUED TO NEWSGUARD TECHNOLOGIES, INC.
FTC FILE NO. 251-0061**

Unless modified by agreement with the staff of the Federal Trade Commission (the “Commission” or the “FTC”), each Specification of this Civil Investigative Demand (“CID”) requires a complete search of NewsGuard Technologies, Inc. (“NewsGuard”) as defined in the Definitions, which appear after the following Specifications. Pursuant to the Commission’s Rules of Practice, 16 C.F.R. § 2.7(k), NewsGuard representatives must confer with the Commission representative identified in the final instruction of this CID within fourteen days after receipt of this CID. If NewsGuard believes that the required search or any other part of this CID can be narrowed in any way that is consistent with the Commission’s need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative. All modifications to this CID must be agreed to in writing pursuant to the Commission’s Rules of Practice, 16 C.F.R. § 2.7(l).

1. State where NewsGuard is incorporated and registered and provide a copy of NewsGuard’s articles of incorporation and statutes.
2. State the location and full physical address of each of NewsGuard’s offices in the United States and worldwide.
3. Provide NewsGuard organizational charts from 2018 through the present or other documents sufficient to show all NewsGuard personnel over the same time period with responsibility for the following: News Reliability Ratings and any other rating, label, or categorization maintained by NewsGuard, including “nutrition labels”; Misinformation Fingerprints; FAILSafe for AI; AI Safety Suite; NewsGuard for Advertising; Media Intelligence Dashboard; TV/CTV Reliability Ratings; Podcast Reliability Ratings; HealthGuard; and any other product, program, project, work, or special report relating to data, analysis, or journalism that helps companies or consumers distinguish between sources of information online.
4. Describe each product and service that NewsGuard currently offers or has offered from 2018 through the present.
5. Provide all documents relating to NewsGuard’s News Reliability Ratings and any other rating, label, or categorization maintained by NewsGuard; Misinformation Fingerprints; AI Safety Suite; NewsGuard for Advertising; Intelligence Dashboard; Nutrition Labels; or any other product, program, project, work, or special report relating to data, analysis, or journalism that helps companies or consumers distinguish between sources of information online.
6. Provide all communications between NewsGuard and any other party regarding any request for NewsGuard to apply a particular reliability rating to any news or information outlet, regardless of whether the request was fulfilled.

Civil Investigative Demand to NewsGuard Technologies, Inc.

7. Provide all documents relating to any complaints that NewsGuard received related to its activities, programs, or policies, including but not limited to complaints regarding NewsGuard's decision to apply a reliability rating to any content.
8. Provide all communications between NewsGuard and any advertiser, advertising agency, or any person acting as an agent of an advertiser, including but not limited to demand side platforms and supply side platforms, related to brand safety or any of the NewsGuard programs identified in Specification 4 and 5.
9. Provide all documents relating to other entities that engage, either directly or indirectly, in tracking, categorizing, monitoring, analyzing, evaluating, or rating news, media, sources, outlets, websites, or other content publisher entities for "brand suitability," "reliability," "misinformation," "hate speech," "false" or "deceptive" content, or similar categories. This request includes but is not limited to communications between NewsGuard and any person connected to these entities. For purposes of this Specification, such entities include but are not limited to:
 - a. The World Federation of Advertisers ("WFA");
 - b. The Global Alliance for Responsible Media ("GARM");
 - c. The Global Disinformation Index ("GDI");
 - d. The Interactive Advertising Bureau ("IAB");
 - e. Ad Fontes Media, Inc.;
 - f. The Check My Ads Institute;
 - g. Integral Ad Science ("IAS");
 - h. DoubleVerify;
 - i. Barometer;
 - j. Media Matters for America;
 - k. The Center for Countering Digital Hate;
 - l. Nelez; or
 - m. The Media Roundtable.
10. Provide all documents, including letters, narrative responses, and other materials, produced by NewsGuard to the United States Congress as part of a congressional investigation into media censorship, freedom of speech, or NewsGuard activities, including but not limited to documents in Your possession, custody, or control relating to or cited in:

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- a. The United States House of Representatives Committee on the Judiciary July 10, 2024 Interim Staff Report entitled “GARM’s Harm: How the World’s Biggest Brands Seek to Control Online Speech;” and
 - b. The United States House of Representatives Committee on Small Business, Interim Staff Report entitled “Small Business: Instruments and Casualties of the Censorship-Industrial Complex.”
11. Submit one or more Data Sets sufficient to show for any news, media, sources, outlets, websites, or other content publisher entities rated, evaluated, assigned a label, or otherwise scored by NewsGuard:
 - a. The name of the entity;
 - b. The address of any website(s) associated with the entity;
 - c. Any unique identifier(s) used to identify the entity across NewsGuard’s databases or data sets; and
 - d. Any categorization of the entity, including but not limited to whether the entity is associated news, satirical, or platform content.
12. For each entity identified in Specification 11, submit one or more Data Sets sufficient to show, from 2018 through the present:
 - a. The entity’s News Reliability Rating, including any scoring changes and when those changes occurred;
 - b. The scoring of the component criteria used to calculate the entity’s News Reliability Rating, including any scoring changes and when those changes occurred; and
 - c. Any other rating, label, or categorization of entities maintained by NewsGuard, including any changes and when those changes occurred.
13. Provide any list produced, licensed, sold, or otherwise provided by You to any third party that evaluates or categorizes any news, media, sources, outlets, websites, or other content publisher entities by credibility or any other categorical metric maintained by NewsGuard.
14. Provide documents and data sufficient to show the methodology by which NewsGuard evaluates or categorizes any news, media, sources, outlets, websites, or other content publisher entities, including but not limited to the process NewsGuard uses to select the sample of articles on which to rate the entity.
15. Provide documents and data sufficient to show the methodology by which NewsGuard determines the ratings, labels, or categorizations that it applies to news or information sites.

Civil Investigative Demand to NewsGuard Technologies, Inc.

16. Provide any analysis, evaluation, and/or assessment performed by or provided to NewsGuard of the effect of NewsGuard's News Reliability Rating or any other rating, label, or categorization maintained by NewsGuard, on the profits, revenues, unique visitors, subscribers, or any other business metric of any news, media, sources, outlets, websites, or other content publisher entities rated, evaluated, assigned a label, or otherwise scored by NewsGuard, and all data sets and code that would be necessary to replicate the analysis.
17. Provide all documents reflecting allegations that NewsGuard's reliability ratings are politically biased.
18. Provide all documents reflecting allegations that NewsGuard's reliability ratings or rating criteria are unreliable, subjective, unscientific, or otherwise methodologically unsound.
19. Provide all documents relating to the effect of NewsGuard's reliability rating or any other rating, label, or categorization maintained by NewsGuard, on the profits, revenues, unique visitors, subscribers, or any other business metric of any news, media, sources, outlets, websites, or other content publisher entities rated, evaluated, assigned a label, or otherwise scored by NewsGuard.
20. Provide all documents relating to any benefits to advertisers or to advertising brands that come from using any of NewsGuard products,
21. Provide all documents relating to NewsGuard's claim that "Advertising with NewsGuard unlocks: Premium inventory at lower CPMs, driving significant cost efficiencies; Highly engaged news audiences across the political spectrum; Quality environments that boost campaign performance and generate results; [and] Brand integrity and content alignment that creates opportunities rather than restrictions."
(<https://www.newsguardtech.com/solutions/newsguard-for-advertising/>).
22. Provide all documents relating to the purpose of NewsGuard's News Reliability Rating or any other rating, label, or categorization maintained by NewsGuard, including but not limited to promotional and advertising materials created and/or disseminated by NewsGuard.
23. Provide all documents relating to NewsGuard's use of AI technology to provide any of its services.
24. Provide all documents relating to NewsGuard working with ad tech, technology, or developer companies to develop and advance any of NewsGuard's programs, policies, and objectives, including but not limited to any agreements between NewsGuard and these companies.
25. Provide all analyses or studies NewsGuard conducted, sponsored, or commissioned relating to advertising on social media or digital advertising platforms, and all data sets and code that would be necessary to replicate the analysis.

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26. Submit one or more Data Sets sufficient to show, for each customer of NewsGuard services (excluding subscribers to the Reality Check newsletter or the NewsGuard browser extension):
 - a. The name of the customer;
 - b. Any unique identifier(s) used to identify the customer across NewsGuard's databases or data sets; and
 - c. Any categorization of the customer type, including but not limited to whether the customer is educational, not-for-profit, governmental, and/or a business.
27. Provide each financial statement, budget, profit and loss statement, cost center report, profitability report, and any other financial report regularly prepared by or for NewsGuard on any periodic basis. For each such statement, budget, or report, state how often it is prepared, and identify the employees responsible for its preparation; provide all such statements and reports on both a quarterly basis and a yearly basis.
28. Submit one or more Data Sets sufficient to show, for each year from 2018 through present:
 - a. In total and by each product or service offered by NewsGuard:
 - i) Revenues;
 - ii) Revenue deductions or adjustments, including but not limited to discounts;
 - iii) Costs of goods sold;
 - iv) Operating expenses;
 - v) Gross margin, including specifying the formula for calculating gross margin;
 - vi) Net margin, including specifying the formula for calculating net margin;
 - vii) EBITDA;
 - viii) EBITDA margin;
 - ix) Total number of licenses; and
 - x) Total number of customers, including by customer type.
 - b. By customers for each customer of NewsGuard identified in Specification 26, in total and by each product or service offered by NewsGuard:
 - i) Gross payments received from the customer;
 - ii) Payment deductions or adjustments, including but not limited to discounts;

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- iii) Cost of goods sold; and
 - iv) Total number of licenses.
29. For each Data Set provided in response to any Specification in this Civil Investigative Demand, provide a data dictionary that includes:
- a. A list of field names and a definition for each field contained in the Data Set;
 - b. The meaning of each code that appears as a field value in the Data Set; and
 - c. The primary key in the Data Set or table that defines a unique observation.
30. Identify and describe the steps NewsGuard took to preserve documents related to this CID. Submit documents sufficient to show all NewsGuard document retention policies in effect during any portion of the relevant period.
31. Identify the person(s) responsible for preparing the responses to this CID and submit a copy of all instructions prepared by NewsGuard relating to the steps taken to respond. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and title or job description) whose files were searched by each. For each Specification requiring a narrative response or data, identify all individuals who provided any information considered or used in drafting the response.

DEFINITIONS

For purposes of this CID, the following Definitions apply:

- 1. “NewsGuard Technologies Inc.,” “You,” “Your,” and “NewsGuard” mean NewsGuard, together with its successors, predecessors, divisions, wholly- or partially-owned subsidiaries, committees, working groups, alliances, affiliates, and partnerships, whether domestic or foreign; and all the directors, officers, employees, consultants, agents, and representatives of the foregoing. Identify by name, address, and phone number, each agent or consultant.
- 2. “Agreement” means any oral or written contract, arrangement, or understanding, whether formal or informal, between two or more Persons, together with all modifications or amendments thereto.
- 3. “Communication” means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- 4. “Data Set” means all or a subset of data held by, or accessible to, NewsGuard in the normal course of business.

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5. “Document” and “documents” mean any information, on paper or in electronic format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of NewsGuard. The term “documents” includes, without limitation: computer files; email messages; text messages; instant messages and chat logs; other Messaging Applications; group chats; voicemails and other audio files; calendar entries; schedulers; drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that Person’s files; notes of meetings or telephone calls; and copies of documents the originals of which are not in the possession, custody, or control of NewsGuard.
 - a. The term “computer files” includes information stored in, or accessible through, computers or other information retrieval systems. Thus, NewsGuard should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off NewsGuard premises. If NewsGuard believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission’s need for documents and information, you are encouraged to discuss a possible modification to this Definition with the Commission representative identified on the last page of this Request. The Commission representative will consider modifying this Definition to:
 - i) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from those that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the NewsGuard;
 - ii) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, certain time periods, or certain Specifications identified by the Commission representative; or
 - iii) include other proposals consistent with Commission policy and the facts of the case.
6. “Each,” “any,” and “all” mean “each and every.” The terms “and” and “or” have both conjunctive and disjunctive meanings as necessary to bring within the scope of this CID anything that might otherwise be outside its scope. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.
7. “Identify” or “specify,” when used in reference to a natural person, means to state the person’s (1) full name; (2) present or last-known residence and telephone number and present or last-known business address and telephone number; and (3) present or last-known employer and job title. For any person identified, if any of the above information was different during the time period relevant to the CID, supply both the current

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information and such different information as applies to the time period relevant to the CID. Once a natural person has been identified properly, it shall be sufficient thereafter when identifying that same person to state the name only.

“Identify” or “specify,” when used in reference to a corporation or other non-natural person, means (1) to state that entity’s name; (2) to describe its nature (e.g., corporation, partnership, etc.); (3) to state the location of its principal place of business; and (4) to identify the natural person or persons employed by such entity whose actions on behalf of the entity are responsive to the CID. Once such an entity has been identified properly, it shall be sufficient thereafter when identifying that same entity to state the name only.

“Identify” or “specify,” when used in reference to facts, acts, events, occurrences, meetings, or communications, means to describe, with particularity, the fact, act, event, occurrence, meeting, or communication in question, including but not limited to (1) identifying the participants and witnesses of the fact, act, event, occurrence, meeting, or communication; (2) stating the date or dates on which the fact, act, event, occurrence, meeting, or communication took place; (3) stating the location(s) at which the fact, act, event, occurrence, meeting, or communication took place; and (4) providing a description of the substance of the fact, act, event, occurrence, meeting, or communication.

8. “Include” and “including” mean “including but not limited to.” The use of the term “include” in any request shall not be used to limit the generality or scope of any request. Nor shall the generality of any request be limited by the fact that another request touches on the same topic with a greater or lesser degree of specificity.
9. “Person” or “persons” includes NewsGuard and means any natural person, corporate entity, sole proprietorship, partnership, association, governmental or non-governmental entity, or trust.
10. “Relate,” “related to,” and “relating to” mean, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting on, discussing, describing, identifying, referring to, reflecting, reporting on, stating, or dealing with.
11. The term “Messaging Application” refers to any electronic method that has ever been used by NewsGuard and its employees to communicate with each other or entities outside NewsGuard for any business purposes. “Messaging Application” includes platforms, whether for ephemeral or non-ephemeral messaging, for email, chats, instant messages, text messages, and other methods of group and individual communication (e.g., Microsoft Teams, Slack, GroupMe, WhatsApp, Signal, Skype). “Messaging Application” may overlap with “Collaborative Work Environment.”

INSTRUCTIONS

For the purposes of this CID, the following Instructions apply:

- I 1. All references to year refer to calendar year. Unless otherwise specified, each of the Specifications calls for: (1) documents for each of the years from January 1, 2018 to the present; and (2) information for each of the years from January 1, 2018 to the present.

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Where information, rather than documents, is requested, provide it separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply NewsGuard's fiscal year data indicating the 12-month period covered, and provide the NewsGuard's best estimate of calendar year data.

- I 2. Do not produce any Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI") prior to discussing the information with a Commission representative. If any document responsive to a particular Specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document. The term "Sensitive Personally Identifiable Information" means an individual's Social Security Number alone; or an individual's name, address, or phone number in combination with one or more of the following:
- Date of birth
 - Driver's license number or other state identification number, or a foreign country equivalent
 - Passport number
 - Financial account number
 - Credit or debit card number

The term "Sensitive Health Information" includes medical records and other individually identifiable health information, whether on paper, in electronic form, or communicated orally. Sensitive Health Information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

- I 3. Except for privileged material, NewsGuard will produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. NewsGuard should submit any appendix, table, or other attachment by either attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Attachments must be produced along with the document to which they are attached, regardless of whether they have been produced separately. Except for privileged material, NewsGuard will not redact, mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.
- I 4. Compliance with this CID requires a search of all documents in the possession, custody, or control of NewsGuard, including, without limitation, those documents held by any of NewsGuard's officers, directors, employees, agents, representatives, or legal counsel, whether or not such documents are on the premises of NewsGuard. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive documents, NewsGuard must provide the Commission with the following information as

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to each such person: his or her name, address, telephone number, and relationship to NewsGuard.

- I 5. Form of Production: NewsGuard shall submit documents as instructed below absent written consent from the Commission representative.
- a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:
- i) Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata.
- ii) Submit emails in TIFF (Group IV) format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Spec No.	Subpoena/request paragraph number to which the document is responsive.
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar

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Metadata/Document Information	Description
	value in other message systems.
Email Subject	Subject line of the email.
Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	Recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]
Page count	Number of pages in record
File size	Size of document in KB
File Extension	File extension type (e.g., docx, xlsx)
Record Type	Indicates form of record: E-Doc, E-Doc Attachment, Email, Email Attachment, HardCopy, Calendar Appt, Text Message, Chat Message, etc.
Folder	File path/folder location of email.
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Redaction	Indicates Yes or No status regarding document redactions.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt

- iii) Submit email attachments other than those described in subpart (a)(i) in TIFF (Group IV) format. For all email attachments, provide extracted text and the following metadata and information as applicable:

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Metadata/Document Information	Description
Spec No.	Subpoena/request paragraph number to which the document is responsive.
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of person from whom the file was obtained.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY]
Page count	Number of pages in record
File size	Size of document in KB
File Extension	File extension type (e.g., docx, xlsx)

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Metadata/Document Information	Description
Filename with extension	Name of the original native file with file extension.
Record Type	Indicates form of record: E-Doc, E-Doc Attachment, Email, Email Attachment, HardCopy, Calendar Appt, Text Message, Chat Message, etc.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Author	Author field value extracted from the metadata of a native file.
Last Author	Last Saved By field value extracted from metadata of a native file.
Redaction	Indicates Yes or No status regarding document redactions.
Native Link	Relative file path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- iv) Submit all other electronic documents, other than those described in subpart (a)(i), in TIFF (Group IV) format accompanied by extracted text and the following metadata and information:

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Metadata/Document Information	Description
Spec No.	Subpoena/request paragraph number to which the document is responsive.
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the original custodian of the file.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY HH:MM:SS AM/PM]
Record Type	Indicates form of record: E-Doc, E-Doc Attachment, Email, Email Attachment, HardCopy, Calendar Appt, Text Message, Chat Message, etc.
Author	Author field value extracted from the metadata of a native file.
Last Author	Last Saved By field value extracted from metadata of a native file.
Redaction	Indicates Yes or No status regarding document redactions.
Page count	Number of pages in record
File size	Size of document in KB
File Extension	File extension type (e.g., docx, xlsx)
Filename with extension	Name of the original native file with file extension.

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Metadata/Document Information	Description
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Native Link	Relative path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC-0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- v) Submit documents stored in hard copy in TIFF (Group IV) format accomplished by OCR with the following information:

Metadata/Document Information	Description
Spec No.	Subpoena/request paragraph number to which the document is responsive.
Bates Begin	Beginning Bates number of the document.
Bates End	Bates number of the last page of the document.
Record Type	Indicates form of record: E-Doc, E-Doc Attachment, Email, Email Attachment, HardCopy, Calendar Appt, Text Message, Chat Message, etc.
Page count	Number of pages in record.

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Redaction	Indicates Yes or No status regarding document redactions.
Custodian	Name of person from whom the file was obtained.

- vi) Submit redacted documents in TIFF (Group IV) format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 9.
- b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Submit data separately from document productions.
- c. Produce electronic file and ESI processed submissions as follows:
 - i) For productions over 20 gigabytes, use an External Hard Disc Drive (stand-alone portable or hard drive enclosure) or USB Flash Drive in Microsoft Windows-compatible, uncompressed data format.
 - ii) For productions under 20 gigabytes, submissions may be transmitted electronically via FTP. The FTC uses Kiteworks Secure File Transfer. To request a Kiteworks upload invitation, contact the FTC representative identified in the request you received. Use of other File Transfer methods is permitted. Please discuss this option with the FTC representative identified in the CID to determine the viability.
 - iii) CD-ROM (CD-R, CD-RW) optical disks and DVD-ROM (DVD+R, DVD+RW) optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats.
 - iv) All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of NewsGuard's compliance with this CID.
 - v) Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.
- d. Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; list of

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custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.

- e. If NewsGuard intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in NewsGuard's computer systems or electronic storage media, or if NewsGuard's computer systems contain or utilize such software, NewsGuard must contact the Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner NewsGuard may use such software or services when producing materials in response to this CID.
- I 6. Before using software or technology (including search terms, email threading, Technology Assisted Review, deduplication, or similar technologies) to identify or eliminate documents, data, or information potentially responsive to this CID, NewsGuard must submit a written description of the method(s) used to conduct any part of its search. In addition, for any process that relies on search terms to identify or eliminate documents, NewsGuard must submit: (a) a list of proposed terms; (b) a tally of all the terms that appear in the collection and the frequency of each term; (c) a list of stop words and operators for the platform being used; and (d) a glossary of industry and NewsGuard terminology. For any process that relies on a form of Technology Assisted Review to identify or eliminate documents, NewsGuard must include (a) confirmation that subject-matter experts will be reviewing the seed set and training rounds; (b) recall, precision, and confidence-level statistics (or an equivalent); and (c) a validation process that allows Commission representatives to review statistically-significant samples of documents categorized as non-responsive documents by the algorithm.
- I 7. All documents responsive to this CID:
- a. shall be produced in complete form (e.g., including all family members, including Modern Attachments), un-redacted unless privileged, and in the order in which they appear in NewsGuard's files;
 - b. shall be marked on each page with corporate identification and consecutive document control numbers when produced in TIFF format (e.g., ABC-00000001);
 - c. if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
 - d. shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (e.g., a chart or graph), makes any substantive information contained in the document unintelligible, NewsGuard must submit the original document, a like-colored photocopy, or a JPEG-format TIFF);
 - e. shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive

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document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission representative determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request; and

- f. shall be accompanied by an affidavit of an officer of NewsGuard stating that the copies are true, correct, and complete copies of the original documents.
- I 8. If any documents or parts of documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes, in separate fields, a privilege identification number; beginning and ending document control numbers; parent document control numbers; attachments document control numbers; family range; number of pages; all authors; all addressees; all blind copy recipients; all other recipients; all custodians; date of the document; the title or subject line; an indication of whether it is redacted; the basis for the privilege claim (e.g., attorney-client privilege), including the underlying privilege claim if subject to a joint-defense or common-interest agreement; and a description of the document's subject matter. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the Person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document or part of a document withheld under a claim that it constitutes or contains attorney work product, also state whether NewsGuard asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this Instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing NewsGuard that were not directly or indirectly furnished to NewsGuard or any third party, such as internal law firm memoranda, may be omitted from the log. Provide the log in Microsoft Excel readable format.
- I 9. If NewsGuard is unable to answer any question fully, supply such information and data as are available. Explain why the answer is incomplete, the efforts made by NewsGuard to obtain the information and data, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for NewsGuard to make an estimate, provide an explanation.

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- I 10. If documents responsive to a particular Specification no longer exist for reasons other than the ordinary course of business or the implementation of NewsGuard's document retention policy, but NewsGuard has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the Specification(s) to which they are responsive, and identify the persons having knowledge of the content of such documents.
- I 11. Do not destroy or dispose of documents responsive to this CID, or any other documents relating to the subject matter of this CID. The destruction or disposal of such documents during the pendency of this investigation might constitute a felony in violation of 18 U.S.C. § 1505 and 18 U.S.C. § 1512.
- I 12. In order for NewsGuard's response to this CID to be complete, the attached certification form must be executed by the NewsGuard official supervising compliance with this CID, notarized, and submitted along with the responsive materials.
- I 13. Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Justin Epner at (202) 326-2942 or jepner@ftc.gov. The response to the CID shall be delivered per the instruction of Mr. Epner during the course of normal business (8:30 a.m. to 5:30 p.m., Monday through Friday). Mr. Epner will provide specific mail delivery instructions should that method of transmittal be required.

CERTIFICATION OF COMPLIANCE

Pursuant to 28 U.S.C. § 1746

I, _____, certify the following with respect to the Federal Trade Commission's ("FTC") Civil Investigative Demand directed to NewsGuard Technologies, Inc. ("NewsGuard") (FTC File No. 251-0061) (the "CID"):

1. NewsGuard has identified all documents, information, and/or tangible things ("responsive information") in NewsGuard's possession, custody, or control responsive to the CID and either:
 - a. provided such responsive information to the FTC; or
 - b. for any responsive information not provided, given the FTC written objections setting forth the basis for withholding the responsive information.
2. I verify that the responses to the CID are complete and true and correct to my knowledge.

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

Date: _____

Signature

Printed Name

Title

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS
IN NONPUBLIC INVESTIGATIONS OF COLLUSIVE PRACTICES**

File No. P859910

Nature and Scope of Investigation:

To investigate whether any persons, partnerships, corporations, or others have engaged or are engaging in inviting, initiating, participating in, or facilitating collusion or coordination in any way with any other market participant, whether through private communications, public statements, sharing information, or other actions, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or any other statutes or rules enforced by the Commission; and to determine the appropriate action or remedy, including whether injunctive and monetary relief would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with any inquiry within the nature and scope of this resolution for a period not to exceed ten years. The expiration of this ten-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the ten-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b- 1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto.

By direction of the Commission.

Issued: July 1, 2022
Expires: July 1, 2032


April J. Tabor
Secretary

Exhibit 16



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

January 15, 2026

VIA EMAIL

NewsGuard Technologies, Inc.
c/o Sophia A. Hansell, Esq.
Gibson Dunn & Crutcher LLP
1700 M Street, NW
Washington, DC 20036
SHansell@gibsondunn.com

Re: FTC File No. 251-0061

Dear Ms. Hansell:

This letter responds to your request for clarification in our January 13, 2025 teleconference as to NewsGuard Technologies, Inc.'s ("NewsGuard") obligations under the May 20, 2025 Civil Investigative Demand ("CID") issued by the Commission. As staff have said consistently during multiple meet-and-confer teleconferences with NewsGuard,¹ this investigation seeks information regarding potential anticompetitive behavior by companies operating in the online digital advertising ecosystem, including whether certain companies may have colluded to deny advertising revenue to American political commentary publishers. While we appreciate the materials NewsGuard has produced to date, we require a discrete set of additional information before we can accept a certification of compliance with the CID.

Therefore, consistent with staff's good-faith effort to reduce NewsGuard's burden consistent with the Commission's need for information, this letter modifies the CID pursuant to FTC Rule 2.7(*l*) as follows:

Specification 8. Modified to limit the Specification to communications between NewsGuard and any advertiser, advertising agency, or any person acting as an agent of an advertiser, including but not limited to demand side platforms and supply side platforms, with whom NewsGuard had a commercial relationship relating to NewsGuard News Reliability Ratings.

Specification 11. Modified to limit the Specification to entities to whom NewsGuard has assigned a News Reliability Rating.

¹ May 28, 2025, June 4, 2025, June 18, 2025, July 10, 2025, July 18, 2025, July 31, 2025, August 21, 2025, September 8, 2025, November 17, 2025, and January 13, 2026.

Specification 12. Specification 12 remains outstanding.

Specification 15. Modified to limit the Specification to documents sufficient to show the methodology by which NewsGuard determines NewsGuard's News Reliability Ratings, including internal correspondence about the process of developing the methodology.

Specification 26. Modified to limit the Specification to Data Sets sufficient to show, for each customer (other than natural persons) of NewsGuard News Reliability Ratings: the name of the customer; any unique identifier(s) used to identify the customer across NewsGuard's databases or data sets; and any categorization of the customer type, including but not limited to whether the customer is educational, not-for-profit, governmental, and/or a business.

As to the Specifications not specifically addressed in this modification letter, based on its prior productions NewsGuard has satisfied its CID obligations, except for Specification 12, for which NewsGuard owes a response.

As you are aware, the modifications granted in this letter are substantial. In letters dated June 27, July 17, and August 15, 2025, as well as in meet-and-confer teleconferences, you objected to the CID as unduly burdensome. While we disagree, these modifications should serve to address any burden concerns that NewsGuard may have.

If you have any questions concerning the CID or this letter, please contact Justin Epner at (202) 326-2942 or jepner@ftc.gov. As you know, modifications may only be made in writing and by a Commission representative.

/s/ Patricia Galvan
Patricia Galvan
Assistant Director
Technology Enforcement Division
Bureau of Competition

cc:
Justin Epner
Ted Zang
Attorneys, Bureau of Competition

Exhibit 17



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

For Release

FTC Prevents Anticompetitive Coordination in Global Advertising Merger

June 23, 2025 |   

Tags: [Competition](#) | [Bureau of Competition](#) | [Merger](#) | [coordinated interaction](#)

Today, the Federal Trade Commission took action to resolve antitrust concerns related to Omnicom Group Inc.'s \$13.5 billion acquisition of The Interpublic Group of Companies, Inc. (IPG).

The FTC accepted a [proposed consent order](#) that will prevent potential anticompetitive coordination by Omnicom, a global advertising agency that facilitates media buying by representing advertisers in negotiations with media publishers over conditions such as pricing, ad placement, and sponsorships, as well as helping execute advertisers' ad campaigns.

Omnicom and IPG are the third- and fourth-largest media buying advertising agencies in the U.S. Combined, they will be the world's largest media buying advertising agency. The proposed order imposes restrictions that prevent Omnicom from engaging in collusion or coordination to direct advertising away from media publishers based on the publishers' political or ideological viewpoints.

"Websites and other publications that rely on advertising are critical to the flow of our nation's commerce and communication," said Daniel Guarnera, Director of the FTC's Bureau of Competition. "Coordination among advertising agencies to suppress advertising spending on publications with disfavored political or ideological viewpoints threatens to distort not only competition between ad agencies, but also public discussion and debate. The FTC's action today prevents unlawful coordination that targets specific political or ideological viewpoints while preserving individual advertisers' ability to choose where their ads are placed. I thank the FTC staff for their thorough investigation of this merger."

The proposed consent order resolves an [FTC complaint](#) alleging that Omnicom's acquisition of IPG threatens to further consolidate the U.S. media buying services market. Further consolidation risks eroding competition by increasing the risk of media buying coordination among the remaining advertising agencies, which have a history of engaging in coordination.

The FTC's complaint alleges that advertising agencies have coordinated—including through industry associations—on decisions not to advertise on certain websites and applications. Coordination among advertising firms may reduce ad revenues for particular media publishers, forcing those publishers to reduce the amount of content they can offer to their own consumers and their investment in their sites.

The terms of the FTC's proposed consent order include a series of provisions that would eliminate Omnicom's ability to deny advertising dollars to media publishers based on their political or ideological viewpoint, except at the express and individualized direction of Omnicom's advertiser customers.

The Commission vote to issue the complaint and accept the consent agreement for public comment was 2-0-1, with Commissioner Mark R. Meador recused. Chairman Andrew N. Ferguson [issued a statement](#).

The public will have 30 days to submit comments on the proposed consent agreement package. Instructions for filing comments appear on the docket. Once processed, they will be posted on [Regulations.gov](#).

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions.

The Federal Trade Commission works to [promote competition](#), and to protect and educate consumers. The FTC will never demand money, make threats, tell you to transfer money, or promise you a prize. You can learn more about [how competition benefits consumers](#), [file an antitrust complaint](#), or [comment on a proposed merger](#). For the latest news and resources, [follow the FTC on social media](#), [subscribe to press releases](#), and [read our blog](#).

Contact Information

Media Contact

[Office of Public Affairs](#)

Office of Public Affairs

202-326-2180

Exhibit 18



Office of the Chairman

UNITED STATES OF AMERICA
Federal Trade Commission
 WASHINGTON, D.C. 20580

Statement of Chairman Andrew N. Ferguson
In the Matter of Omnicom Group / The Interpublic Group of Cos.
Matter Number 2510049

June 23, 2025

The Commission today authorizes the filing of an administrative complaint and proposed decision and order requiring Omnicom Group Inc. (“Omnicom”) and The Interpublic Group of Companies, Inc. (“IPG”) to refrain from practices that damage competition in the media-buying services market post-merger. Omnicom is the third-largest provider of media buying services by revenue, and IPG is the fourth-largest.¹ The merger would increase concentration in this market and risk competitive harm.² Without the commitments obtained by the Commission, I have reason to believe that the effect of Omnicom’s proposed acquisition of IPG “may be substantially to lessen competition.”³

I

Omnicom and IPG are two of the six major global advertising holding companies (“holdcos”).⁴ These advertising holdcos are conglomerates of various advertising agencies acquired over time.⁵ Advertising agencies play an essential role in linking advertisers with media publishers, including television networks, print publications, websites, and social media platforms.⁶ Advertisers understandably do not necessarily possess the in-house expertise to determine where their advertisements should be placed. They therefore hire advertising agencies not only to make many of these decisions for them, but also to represent advertisers in negotiations with media publishers on key terms such as pricing, ad placement, sponsorships, and exclusives.⁷ In serving this role, the advertising agencies hold great influence over where advertisers market their products and spend their advertising dollars. The advertising agencies’ decisions then are critical to the success and failure of publishers: most publishers would not be economically viable without sufficient advertising revenue. This impact is not limited to behemoth publishers like television networks, social-media platforms, and major websites. It also includes thousands of small, independent publishers who serve important, unique consumer needs, and are vital to the free exchange of ideas.

¹ Complaint ¶ 11, *In the Matter of Omnicom Group and The Interpublic Group of Cos.*, Matter No. 2510049 (“Complaint”).

² *Id.* ¶ 13; see also Omnicom to Acquire Interpublic in Deal that Will Reshape Advertising Industry, Wall St. J. (Dec. 9, 2024), <https://www.wsj.com/business/media/omnicom-to-acquire-interpublic-group-in-deal-that-will-reshape-advertising-industry-eed6f1b3>.

³ 15 U.S.C. § 18.

⁴ Complaint ¶¶ 6, 12.

⁵ *Id.* ¶ 6.

⁶ *Id.* ¶ 7.

⁷ *Ibid.*

Advertising agencies compete on many dimensions, including in the market no broader than media-buying services.⁸ “Media-buying services” refers to the purchase of advertising space from publishers for or on behalf of advertisers.⁹ Historically agencies needed scale to achieve favorable results in negotiations with publishers, encouraging consolidation in the market to today’s so-called “Big Six.”¹⁰

Omnicom’s proposed acquisition of IPG would consolidate the media-buying services market even further. It would bring together the third- and fourth-largest companies in this market to form a new number one, while reducing the number of significant competitors from six to five.¹¹ As a result, concentration in this market would increase. One of the great dangers of mergers such as this one is that they increase the risk of collusion among the remaining firms, which can lead to higher prices, reduced output, and other actions that harm consumers such as degraded quality.¹² This risk is what is often referred to as “coordinated effects”—a merger leads to reduced competition not because of a single firm’s unilateral actions, but because a group of firms coordinate their behavior in anticompetitive ways.¹³

The rationale for this longstanding concern about the increased risk of coordinated effects from higher concentration is straightforward. The ease of coordination is inversely related to the number of firms in a market. Collusion and coordination are easier in concentrated markets with few participants than in unconcentrated markets with many participants. Collusion, of course, is “the supreme evil of antitrust.”¹⁴ Section 7 of the Clayton Act therefore prohibits mergers that “create an appreciable danger of collusive practices in the future.”¹⁵ Decades-old precedent establishes that a merger that reduces the number of competitors from six to five, like this one, can, in some circumstances, suffice to establish a Section 7 violation.¹⁶ That is not to say that a six-to-five merger always violates Section 7. This precedent merely establishes that increased consolidation raises antitrust concerns, and the reduction of a market from six to five competitors increases the risk of collusion in that market. Leading antitrust scholars across the spectrum have similarly identified mergers that increased the risks of coordinated effects as suspect.¹⁷ And the

⁸ *Id.* ¶ 9.

⁹ *Ibid.*

¹⁰ *Id.* ¶¶ 8, 12.

¹¹ *Id.* ¶¶ 11, 13.

¹² Phillip Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 916 (rev. ed. 2024) (“Areeda & Hovenkamp”) (“Today the most orthodox and probably the commonly asserted rationale for challenging mergers is that under appropriate circumstances they can facilitate express collusion or oligopoly interaction among the various firms in the post-merger market, including both those that participated in the merger and those that did not.”); see also *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 229–30 (1993) (“In the § 7 context, it has long been settled that excessive concentration, and the oligopolistic price coordination it portends, may be the injury to competition the Act prohibits.”).

¹³ Complaint ¶ 15.

¹⁴ *Verizon Commc’ns v. Law Offs. of Curtis V. Trinko*, 540 U.S. 398, 408 (2004).

¹⁵ *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 719 (D.C. Cir. 2001) (cleaned up).

¹⁶ *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 905 (7th Cir. 1989) (Posner, J.) (affirming preliminary injunction and explaining that “[t]he supply of industrial dry corn was already highly concentrated before the acquisition, with only six firms of any significance. The acquisition has reduced that number to five. This will make it easier for leading members of the industry to collude on price and output....”).

¹⁷ See *Hosp. Corp. of Am. v. FTC*, 807 F.2d 1381, 1386 (7th Cir. 1986) (Posner, J.) (“When an economic approach is taken in a section 7 case, the ultimate issue is whether the challenged acquisition is likely to facilitate collusion.”); D. Daniel Sokol & Sean P. Sullivan, *The Decline of Coordinated Effects Enforcement and How to Reverse It*, 76 Fla. L.

antitrust agencies' joint merger guidelines dating back to 1992 have uniformly declared that a merger which increases the risk of coordination can violate Section 7.¹⁸ The 2023 Merger Guidelines' similar declaration that “[m]ergers can violate the law when they increase the risk of coordination,” then reiterates what decades of precedent, scholarship, and previous guidelines have long pronounced.¹⁹

One factor that courts, scholars, and the antitrust agencies have long considered in evaluating the risk of coordinated effects resulting from a merger is whether there is a history of actual or attempted collusion in the industry at issue.²⁰ A history of collusion, explicit or tacit, demonstrates that firms have been willing and able to coordinate their actions in the past, making it more likely that they will do so again after a merger, particularly if the merger changes market structure in a way that favors further coordination. The Commission must “investigate whether facts suggest a greater risk of coordination than market structure alone would suggest.”²¹

Here, the Complaint alleges such a history of market participants coordinating their conduct. In recent years, the advertising industry has been plagued by deliberate, coordinated efforts to steer ad revenue away from certain news organizations, media outlets, and social media networks.²² This type of coordination risks America's largest companies' economic weight

Rev. 265, 268 & 271 (2024) (“The greatest threat today is ... *oligopoly* power: the ability of a few competitors to do by coordinated conduct the same things a monopolist would do.”; “The need for vigilance against coordinated effects in merger review is a point upon which opposing philosophies have found common ground.”) (emphasis in original); Herbert Hovenkamp, *Prophylactic Merger Policy*, 70 *Hastings L.J.* 45, 51–55 (2018).

¹⁸ Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 2.1 (April 2, 1992) (“It is likely that market conditions are conducive to coordinated interaction when the firms in the market previously have engaged in express collusion and when the salient characteristics of the market have not changed appreciably since the most recent such incident.”) (“1992 Merger Guidelines”); Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 2.1 (Apr. 8, 1997) (same); Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 7.2 (Aug. 19, 2010) (“The Agencies presume that market conditions are conducive to coordinated interaction if firms representing a substantial share in the relevant market appear to have previously engaged in express collusion affecting the relevant market, unless competitive conditions in the market have since changed significantly. ... Previous collusion or attempted collusion in another product market may also be given substantial weight if the salient characteristics of that other market at the time of the collusion are closely comparable to those in the relevant market.”). The Department of Justice's 1982 Merger Guidelines likewise already declared that “Where only a few firms account for most of the sales of a product, those firms can in some circumstances coordinate, explicitly or implicitly, their actions in order to approximate the performance of a monopolist.” Dep't of Justice, *Merger Guidelines Part I* (June 14, 1982) (“1982 DOJ Merger Guidelines”).

¹⁹ Dep't. of Justice & Fed. Trade Comm'n, *Merger Guidelines* § 2.3 (Dec. 18, 2023) (“2023 Merger Guidelines”).

²⁰ *FTC v. RAG-Stiftung*, 436 F. Supp. 3d 278, 313 (D.D.C. 2020) (citing and quoting discussion of past collusion in an industry from § 7.1 of the antitrust agencies' 2010 Horizontal Merger Guidelines in addressing market vulnerability to coordination); *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 234 (S.D.N.Y. 2020) (similar); 2023 Merger Guidelines § 2.3A (outlining three “primary factors” for assessing the increased risk of coordination—(1) the existence of a highly concentrated market, (2) prior actual or attempted attempts to coordinate, and (3) elimination of a maverick.); 1992 Merger Guidelines § 2.1 (recognizing that past collusion in an industry can be one of the factors giving rise to concerns that following a merger, the remaining firms may coordinate activities); 1982 DOJ Merger Guidelines Part III (“The Department is more likely to challenge a merger in the following circumstances: [] Firms in the market previously have been found to have engaged in horizontal collusion regarding price, territories, or customers, and the characteristics of the market have not changed appreciably since the most recent finding”).

²¹ 2023 Merger Guidelines at 3.

²² Complaint ¶¶ 17–18, 20; see also *The mysterious group that's picking Breitbart apart, one tweet at a time*, Wash. Post (Sept. 22, 2017), https://www.washingtonpost.com/lifestyle/style/the-mysterious-group-thats-picking-breitbart-apart-one-tweet-at-a-time/2017/09/22/df1ee0c0-9d5c-11e7-9083-fbfddf6804c2_story.html; 20-Plus Brands Have

unwittingly being enlisted for the political and ideological aims of certain advertising industry groups and political activists who in turn avoid the costs they would incur if they merely refused to deal on their own.²³ Indeed, a Congressional investigation²⁴ concluded that the World Federation of Advertisers' Global Alliance for Responsible Media (“GARM”) banded together the most powerful firms in their industry to choke off the vital advertising revenue of those who disagreed with them, disseminated information they believed untrue, or refused to deplatform those who did.²⁵ The World Federation of Advertisers' members, which include Omnicom and IPG, account for roughly 90 percent of global advertising spending.²⁶ Both Omnicom and IPG also are founding members of GARM.²⁷

GARM has disbanded under a cloud of litigation and congressional investigation.²⁸ The Commission has not been a party to those actions, and I take no position on any possible violation of the antitrust laws by GARM. The factual allegations, however, if true, paint a troubling picture of a history of coordination—that the group sought to marshal its members into collective boycotts to destroy publishers of content of which they disapproved.²⁹

Pre-closing merger analysis is necessarily a prediction of the likelihood that the risks posed by a merger will come to pass.³⁰ When participants in the industry of a proposed merger have a history of actual or attempted collusion, like alleged for the instant transaction, the Commission must be particularly vigilant.³¹ In a market like advertising, where we are presented not only with increasing concentration in the relevant market, but also a troubling history of collusion to the detriment of consumers and the free conduct of American political discourse and elections, that duty is especially pressing.³²

Stopped Advertising on Tucker Carlson Tonight After Immigration Comments, Ad Week (Dec. 20, 2018), <https://www.adweek.com/convergent-tv/20-plus-brands-have-stopped-advertising-on-tucker-carlson-tonight-after-immigration-comments/>; Snapchat And Pinterest Benefited From The Facebook Boycott – But Can They Keep It Going?, Ad Exchanger (Feb. 9, 2021), <https://www.adexchanger.com/social-media/snapchat-and-pinterest-benefited-from-the-facebook-boycott-but-can-they-keep-it-going/>; Advertisers continue to flee Twitter as civil rights groups call for a boycott, Engadget (Nov. 4, 2022), <https://www.engadget.com/twitter-losing-advertisers-boycott-193748977.html>.

²³ Complaint ¶ 21.

²⁴ Interim Staff Report of the Comm. on the Judiciary U.S. House of Representatives, GARM's Harm: How the World's Biggest Brands Seek to Control Online Speech (July 10, 2024) (“Interim Staff Report”).

²⁵ Complaint ¶ 18.

²⁶ *Ibid.*

²⁷ Global Alliance for Responsible Media Launches to Address Digital Safety, World Federation of Advertisers (June 18, 2019), <https://wfanet.org/knowledge/item/2019/06/18/Global-Alliance-for-Responsible-Media-launches-to-address-digital-safety>.

²⁸ Complaint ¶ 19; see also Statement on the Global Alliance for Responsible Media (GARM), World Federation of Advertisers (Aug. 9, 2024), <https://wfanet.org/leadership/garm/about-garm> (“[R]ecent allegations that unfortunately misconstrue [GARM's] purpose and activities have caused a distraction and significantly drained its resources and finances. WFA therefore is making the difficult decision to discontinue GARM activities.”).

²⁹ See, e.g., Interim Staff Report at 17, 25, 33 (alleging efforts by GARM to drive advertisers away from popular media personalities like Joe Rogan, harm news outlets that reported stories GARM leaders felt were untrue, and coordinate with government agencies to decide which information should be excised from public discourse).

³⁰ *Brown Shoe Co. v. United States*, 370 U.S. 294, 332–33 (1962) (a court must “predict the probable future consequences of this merger.”).

³¹ Complaint ¶ 16.

³² *Id.* ¶¶ 19–22.

GARM was neither the beginning nor the end of harmful and potentially unlawful collusion in this industry.³³ Numerous other industry groups and private organizations have publicly sought to use the chokepoint of the advertising industry to effect political or ideological goals.³⁴ Clandestine pressure campaigns and private dealings among these parties are less well documented but pose the serious risk of harm and illegality. The evidence in this case gives me sufficient “reason to believe”³⁵ that, in the absence of any intervention, the proposed acquisition is likely to substantially reduce competition and may enhance the vulnerability to coordinated effects that already exists in this particular industry. The history relayed above convinces me that likelihood is of serious concern to the American public.

II

As already highlighted, the Commission, in reviewing a merger that effects an increase in concentration, is always duty-bound to address the risk of collusion.³⁶ As a leading antitrust treatise makes clear, “evidence of historical attempts at collusion or evidence that collusion is actually occurring in the present could be considered as ‘exacerbating’ factors sufficient to warrant a merger challenge under circumstances where structural evidence alone would be insufficient.”³⁷ Evidence of past collusion or attempted collusion has played a key role in judicial decisions enjoining mergers under Section 7 for many years before the Commission adopted the 2023 Guidelines.³⁸ And in negotiating settlements, the Commission may impose stringent remedies based on past collusion in the industry.³⁹

In this case, to resolve the Commission’s concerns, the parties have proposed a remedy in the form of conduct restrictions that will mitigate this merger’s anticompetitive effects. The history of collusion in the market for media-buying services, and the increased potential for collusion post-merger, make this a rare instance where the imposition of a behavioral remedy is appropriate.

Specifically, the proposed decision and order prohibits Omnicom and IPG from entering into or maintaining any agreement or practice that would steer advertising dollars away from publishers based on their political or ideological viewpoints. To be sure, coordinated action by advertising agencies against politically disfavored publishers is tantamount to an agreement not to compete on quality—but obtaining such a ruling in litigation could take years. Today’s decision and order eliminates the potential for costly litigation while ensuring that Omnicom and IPG abide by the antitrust laws post-merger.

³³ *Id.* ¶ 19.

³⁴ See Interim Staff Report of the H. Comm. on Small Business, Small Business: Instruments and Casualties of the Censorship-Industrial Complex 42 (Sept. 10, 2024), https://smallbusiness.house.gov/uploadedfiles/house_committee_on_small_business_-_cic_report_september_2024.pdf (describing NewsGuard and other organizations’ steering of advertising revenue with “an unavoidable partisan lens.”).

³⁵ 15 U.S.C. § 45(b); see also *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 241 (1980); *Boise Cascade Corp. v. FTC*, 498 F. Supp. 772, 779 (D. Del. 1980).

³⁶ Antitrust Law Developments 375 (9th ed. 2022) (“a major goal of the merger laws is to prevent markets from consolidating sufficiently to create or enhance the conditions that permit firms to engage in coordinated interaction”); Complaint ¶ 15.

³⁷ Areeda & Hovenkamp ¶ 917.

³⁸ See, e.g., *FTC v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34, 65 (D.D.C. 1998) (“Although the Court is not convinced from the record that the Defendants actually engaged in wrongdoing, it is persuaded that in the event of a merger, the Defendants would likely have an increased ability to coordinate their pricing practices.”).

³⁹ See Opinion of the Commission, *In re Coca-Cola Co.*, 117 F.T.C. 903, 946 (June 13, 1994).

Unlike many conduct remedies, the Commission is well prepared to monitor the ones imposed here. As I pointed out last month, one flaw of conduct remedies is that they can sometimes be difficult to monitor or enforce.⁴⁰ Here, however, the Commission can monitor Omnicom’s and IPG’s compliance. Collusion in the advertising industry remains the subject of active investigations.⁴¹ Any future attempts at collusion by Omnicom and IPG are unlikely to remain hidden. Compliance reporting provisions will give the Commission insight into the merged firm’s activities. Likewise, advertisement publishers have a powerful incentive to alert the Commission if they believe that they are the object of unlawful collusion. Moreover, this Agreement requires Omnicom and IPG to cooperate with the Commission in any investigation relating to media-buying services⁴²—and I have already noted that investigating and policing censorship practices that run afoul of the antitrust laws is a top priority of the Trump-Vance FTC.⁴³

Today’s settlement does not limit either advertisers’ or marketing companies’ constitutionally protected right to free speech—the same freedom that the head of GARM, the organization that Omnicom and IPG founded, once described as an “extreme global interpretation of the US Constitution” and “‘principles for governance’ ... from 230 years ago (made by white men exclusively).”⁴⁴ The decree goes to great lengths to avoid interfering with the free, regular course of business between marketing firms and their customers. Omnicom-IPG may choose with whom it does business and follow any lawful instruction from its customers as to where and how to advertise.⁴⁵ No one will be forced to have their brand or their ads appear in venues and among content they do not wish. The prohibited behavior is limited to “the supreme evil of antitrust”—collusion with other firms and the creation of pre-made “exclusion lists” to encourage advertisers to join *de facto* boycotts coordinated by advertising firms and other third parties.⁴⁶

Today, Omnicom and IPG have committed themselves to help stop that sort of coordination in their industry. This consent agreement will help mitigate the dangers inherent in a consolidated national advertising market. I hope the conditions imposed on this merger will encourage all advertising firms to adopt similar practices and thereby reduce the temptation to collude to the detriment of their customers, independent journalists, small and independent media companies, consumers, and the American public square.

⁴⁰ Statement of Chairman Andrew N. Ferguson, Joined by Comm’r Melissa Holyoak and Comm’r Mark R. Meador, *In the Matter of Synopsys, Inc./Ansys, Inc.*, Matter No. 2410059, at 7 (May 28, 2025).

⁴¹ See, e.g., Press Release, Attorney General Ken Paxton Opens Investigation Into Possible Conspiracy by Advertising Companies to Boycott Certain Social Media Platforms (Nov. 21, 2024), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-opens-investigation-possible-conspiracy-advertising-companies-boycott>.

⁴² Decision and Order, *In the Matter of Omnicom Group, Inc. and The Interpublic Group of Companies, Inc.*, Matter No. 2510049, Part VI (“Decision and Order”).

⁴³ Testimony of Chairman Andrew N. Ferguson before the H. Comm. on Appropriations, Subcomm. on Financial Services and General Government, at 26 (May 15, 2025).

⁴⁴ Interim Staff Report at 2.

⁴⁵ Decision and Order, Part II.

⁴⁶ *Ibid.*

Exhibit 19

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Megamerger Omnicom, IPG Mum About NewsGuard Bias



(Dreamstime)

By Paul Bond | Thursday, 26 June 2025 05:35 PM EDT



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With the Federal Trade Commission approving the \$13.5 billion merger between advertising giants Omnicom Group and The Interpublic Group of Companies with a consent decree stipulating they refrain from discriminating against conservative outlets, a key question remains: Will they still rely on NewsGuard?

The FTC decree — released last week with a 30 day public comment period — aims to prevent the merged entity from engaging in anticompetitive practices, particularly those related to Big Censorship (sometimes labeled the Censorship Industrial Complex).

The FTC's order indicated that Omnicom and IPG had violated the law, specifically the Clayton and Federal Trade Commission Acts, by illegally colluding to boycott targeted groups and other violations.

Rather than charging the agencies, the FTC allowed the ad companies to agree to the Consent Order and stipulate to stop doing anti-competitive acts after the merger is approved.

The FTC decree prohibits the merged company from directing advertisers' spending away from publishers due to their political or ideological stance and from using "exclusion lists" that differentiate publishers by political views.

In the past several ad agencies, Omnicom and IPG included, have signed on to DEI-backed initiatives that targeted "disinformation" media outlets.

The disinformation term became a code word for largely preventing conservative media outlets from getting advertising from large ad agencies.

Legal exper
scheme use
censorship



To enforce such advertising bans, agencies used so-called media monitors, many with a left-wing bent, including NewsGuard, Media Matters for America, GDI, the Center for Countering Digital Hate, and the Trusted News Initiative.

Perhaps the most influential is NewsGuard which has been used by both Omnicom, IPG or their subsidiaries.

NewsGuard has been accused of anticonservative bias by the FTC, FCC, and House committees.

For example, NewsGuard rates the Washington Post a perfect 100 even after the outlet's faulty reporting on the origins of COVID-19 and Hunter Biden's laptop, and its false assertions that President Donald Trump was some sort of agent working for Russia.

While the merger will create the world's largest media buying agency with an estimated \$25 billion in annual revenue, it is still unclear if Omnicom or IPG will stop using NewsGuard or other media monitors.

Newsmax contacted Omnicom and IPG to ask of NewsGuard's status or their use of other media monitors. Neither company responded for comment.

"We are deeply concerned about the FTC's order because it says nothing about media monitors, politicized ratings from NewsGuard and other who have turned disinformation into a censorship racket," Christine Czernejewski, spokesperson for The Independent Media Council (IMC), told Newsmax.

The IMC represents a coalition of conservative and independent media groups opposed to censorship practices, including Newsmax

"The FTC s
they only g



\$13 billion merger," Czernejewski said, "It doesn't add up."

The FTC's consent decree does not explicitly mention NewsGuard or ban ad agencies from using media monitors like NewsGuard.

NewsGuard claims it does not create boycott or exclusion lists and does not rate media outlets based on political views. Their claims have been disputed by multiple critics.

NewsGuard was founded in 2018 by longtime Democratic Party activist and businessman Steve Brill.

Its rating services have long been criticized as highly political. In three separate annual studies the Media Research Center found that NewsGuard ranked liberal media outlets with significantly higher ratings than conservative outlets.

Ad agencies like Omnicom and IPG have used such ratings to deny conservative media advertising placements and revenue.

To ensure FTC compliance, Omnicom must submit annual reports for five years, detailing measures taken to adhere to the decree, including any client-directed exclusion lists based on political ideology.

The FTC declined to respond to Newsmax's questions related to NewsGuard and the IPG-Omnicom merger, which is expected to become effective before the end of the year.

Paul Bond has been a journalist for three decades covering media, entertainment, and politics. His work has primarily appeared in Newsweek, USA Today, Reuters, and The Hollywood Reporter.

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Exhibit 20



Filed Electronically

Andrew N. Ferguson, Chairman
Federal Trade Commission
600 Pennsylvania Ave N.W.
Washington, DC 20580

RE: Omnicom Group Inc. and The Interpublic Group of Companies, Inc.

Dear Mr. Ferguson,

We write in response to the Commission's recent proposed order granting conditional approval of the proposed merger between two of the "Big Six" advertising agencies: Omnicom Group Inc. ("Omnicom") and The Interpublic Group of Companies, Inc. ("IPG"). We believe that this proposed merger will substantially lessen competition in the media buying industry by consolidating two of the six major global ad holding companies. The reduction in competition is so severe that it suggests that the merger should be denied outright. But even if the Commission were to conclude that the merger may move forward, the diminished competition would create the need for more restrictive conditions and more vigilant monitoring than the current proposed order contemplates.

Newsmax is the fourth-highest rated cable news channel today, and we reach over 40 million Americans through our news platforms. Last year the Reuters Institute global survey found that Newsmax was one of the top 12 news brands in the U.S. Similarly, Pew Research reported we were one of the major news sources for Americans during the 2024 election, ranking with NBC News, CBS News, and AP, among others. Newsmax is acutely interested in the proposed merger because it relies significantly on advertising revenue, and Respondents—along with the rest of the Big Six—already exercise concentrated power over the availability of such revenue. Moreover, as discussed below, the Big Six—including Respondents—have a demonstrated history of using that concentrated power for ideologically motivated ends. Through cooperation with third parties, such as the news-outlet "reliability" rating organization NewsGuard, the ad agencies work together to squelch the speech of disfavored—and predominantly right-of-center—outlets, including Newsmax. In order to mitigate the risk that the ad agencies will collude to suppress ideological diversity in the media market, any order approving Respondents' proposed merger should come with strict conditions, including a bar on the use of third-party "reliability" ratings such as those published by NewsGuard and a ten-year-minimum requirement of ongoing compliance reporting and review by an independent monitor.

I. The Proposed Merger Ignores and Condone Omnicom’s and IPG’s Illegal DEI Programs—Putting the Merger Approval in Violation of the President’s Executive Order.

The Commission’s approval of the merger between Omnicom and IPG is in direct violation of Executive Order 14173, signed by President Donald J. Trump in January 2025, titled “*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*.” This Executive Order expressly prohibits federal support or endorsement of Diversity, Equity, and Inclusion (DEI) programs that use race, sex, or other protected characteristics as factors in decision-making, hiring, advancement, or financial allocation.

Despite the clear direction of Executive Order 14173 and additional memoranda issued by the Department of Justice (DOJ) and the Office of Personnel Management (OPM), the Consent Order issued in connection with the Omnicom-IPG merger fails to address—let alone restrict—their prolific and well-documented engagement in DEI-based policies, practices, and initiatives. This omission effectively grants regulatory approval to potentially unlawful behavior.

The merger’s approval stands in stark contrast to other recent merger decisions under the Trump Administration. For example, in the proposed merger of Skydance Media with Paramount Global (CBS), the FCC imposed express conditions requiring the elimination of DEI programs and the appointment of an ombudsman to oversee potential “bias” in editorial operations. No such safeguards have been implemented here, even though Omnicom and IPG exercise significantly greater influence over the media and information landscape through their control of over \$240 billion annually in advertising spend—an amount that far exceeds their reported revenues.

Executive Order 14173 characterizes DEI/DEIA initiatives as “dangerous, demeaning, and immoral race- and sex-based preferences” and asserts that such policies violate federal civil rights laws, including Title VII of the Civil Rights Act. Federal agencies, including the DOJ and OPM, were directed to initiate civil and criminal enforcement actions against DEI practitioners, particularly large institutions and federal contractors.¹

Lara Flath, *et al.*, *DEI Under Siege: A Guide to the Trump Executive Orders*, SKADDEN (2025), <https://www.skadden.com/insights/publications/2025/02/the-informed-board/dei-under-siege>. The Trump Administration has clarified that activities such as the following may constitute illegal discrimination under federal law:

- Affinity groups,

Omnicom publicly embraces DEI at every level of its organization. The company:

- Appointed a Chief Equity & Impact Officer reporting directly to the CEO;²
- Employs over 50 full-time DEI professionals across its agency networks;³
- Operates the *Omnicom People Engagement Network (OPEN)*, supporting identity-based affinity groups (e.g., “Black Together,” “OPEN Pride,” “AccentO”);⁴
- Ties executive compensation to DEI-linked Key Performance Indicators (KPIs);⁵
- Implements mandatory bias training across business units, and
- Created *OPEN 2.0*, a formal DEI roadmap prioritizing race- and gender-based recruitment, mentorship, and client engagement.⁶

Omnicom also established over 150 private advertising marketplaces in partnership with Colossus SSP and others to funnel media budgets to “diverse publishers,” a practice that may constitute racial preference in contracting and distribution of commercial speech.⁷

Similarly, IPG’s DEI commitments are similarly expansive:

-
- “Diverse slate” hiring requirements,
 - Targeted DEI outreach, and
 - Allocation of contracts or advertising dollars based on racial or identity-based criteria.

² *Intersectional ERG Collaboration at Omnicom*, WE CREATE SPACE (June 3, 2024), <https://www.wecreatespace.co/post/intersectional-collaboration-ergs-at-omnicom>.

³ *Omnicom Group 2023 Proxy Statement*, SEC (2023), [U.S.sec.gov/Archives/edgar/data/29989/000121390023022354/def14a2023_omnicom.htm](https://www.sec.gov/Archives/edgar/data/29989/000121390023022354/def14a2023_omnicom.htm).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Chris Kelly, *How Omnicom is Taking Inclusivity Beyond the Mood Board to the Boardroom*, MARKETING DIVE (Oct. 25, 201), <https://www.marketingdive.com/news/how-omnicom-is-taking-inclusivity-beyond-the-mood-board-to-the-boardroom/608687/>.

- In 2022, appointed a Global Chief Diversity & Social Impact Officer reporting to the CEO;⁸
- Was the first holding company to tie CEO compensation to diversity metrics;⁹
- Publicly releases EEO-1 data and maintains a formal board diversity policy;¹⁰
- Aligns human resources and hiring practices with DEI standards;¹¹ and
- Participates in external programs including CEO Action for Diversity & Inclusion™, the Day of Understanding, and the UN Women’s Unstereotype Alliance;¹²

IPG actively uses its media planning to promote DEI, including initiatives such as Equity Upfront (through IPG Mediabrands and MAGNA), which directs media dollars to Black-owned and diverse-owned outlets.¹³ Recruiting programs such as BIPOC externships and “momternships” are identity-specific and appear to violate the principles of race- and sex-neutral hiring required by federal law.

Finally, as discussed further below, both Omnicom and IPG have aligned themselves with media-monitoring services rooted in the DEI movement, including NewsGuard, Global Disinformation Index (GDI), Global Alliance for Responsible Media (GARM). These services act as de facto DEI enforcers by rating and categorizing media outlets based on political, cultural, and identity-based content. For instance, NewsGuard offers an “Inclusion List” of approved outlets targeting specific racial and sexual identity communities; advertiser filters that enable clients to

⁸ Press Release, IPG, Interpublic Names Channing Martin Global Chief Diversity and Social Impact Officer (May 19, 2022), <https://investors.interpublic.com/news-releases/news-release-details/interpublic-names-channing-martin-global-chief-diversity-and>.

⁹ *Id.*

¹⁰ *Interpublic Named Most Awarded Holding Company at ANA Multicultural Excellence Awards*, IPG, <https://www.interpublic.com/our-values/diversity-inclusion/>.

¹¹ *An Evolution of our Long-Standing Commitment to Equity, Diversity and Inclusion*, IPG HEALTH, <https://ipghealth.com/about/equity-diversity-inclusion>.

¹² *Interpublic’s Business Resource Groups*, CEO ACTION, <https://www.ceoaction.com/actions/interpublic-s-business-resource-groups/>.

¹³ *How Mediabrands is Recruiting DE&I Talent Through Social Media*, IPG MEDIABRANDS (July 13, 2022), <https://www.ipgmediabrands.com/category/our-values/diversity-equity-inclusion/>.

exclude or include content based on minority ownership, and segmented ad-targeting tools focused on “community-centered” attributes (e.g., Black, LGBTQ+).¹⁴

These tools have been used by advertising agencies—including Omnicom and IPG—to redirect advertising dollars away from non-compliant media outlets or to penalize content not aligned with progressive DEI narratives, including coverage of topics such as abortion, transgender ideology, or traditional family values.

The FTC’s failure to address or restrict Omnicom and IPG’s extensive DEI practices—despite clear federal policy outlawing such programs—represents a material omission and regulatory failure. The merger approval should be revoked on this basis or strongly modified unless it imposes stringent conditions consistent with Executive Order 14173 and ensures compliance with existing federal civil rights law.

II. The Proposed Merger Would Unacceptably Enhance Omnicom’s Market Power and Harm Competition.

The U.S. advertising industry is already highly consolidated by any reasonable benchmark. As the Commission’s complaint in this matter recognized, “the Big Six holdcos may form a submarket for a distinct set of customers with global media buying needs and higher advertising budgets.”¹⁵ And based on COMvergence estimates for U.S. media spending in 2024, the Big Six advertising industry¹⁶ even prior to the proposed merger had an HHI¹⁷ of 2116.¹⁸ As the Commission has recognized, markets with an HHI of 1800 points or higher are generally

¹⁴ *Use this Form to Configure your Custom NewsGuard Inclusion List*, NEWSGUARD, <https://www.newsguardtech.com/newsguard-inclusion-list-configuration/>.

¹⁵ Compl., *In the Matter of Omnicom Grp. Inc., & The Interpublic Grp. of Cos., Inc.*, at 3 (F.T.C.), https://www.ftc.gov/system/files/ftc_gov/pdf/2510049omnicomcomplaint.pdf.

¹⁶ Comprised of the “Big Six” firms Omnicom, IPG, Publicis, WPP, Dentsu, and Havas.

¹⁷ “The term “HHI” means the Herfindahl–Hirschman Index, a commonly accepted measure of market concentration. “The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers.” *Herfindahl-Hirschman Index*, U.S. DEP’T OF JUST. (last updated Jan. 17, 2024), <https://www.justice.gov/atr/herfindahl-hirschman-index>.

¹⁸ Gideon Spanier, *Will the ‘Big Six’ Become the ‘Big Three’?*, MM+M (Mar. 20, 2025), <https://www.mmm-online.com/news/will-the-big-six-become-the-big-three/>.

considered “highly concentrated.”¹⁹ Moreover, likely near-term developments—apart from the proposed merger at issue—are only likely to increase the concentration of market power among the Big Six. In particular, the advent of generative AI promises to reshape the landscape for media buying and creative services, leaving large, established firms better positioned to invest in AI tools and form partnerships with established AI providers.²⁰

Omnicom’s proposed acquisition of IPG threatens to dramatically increase market consolidation and harm competition. That is again apparent from the most important measure of market concentration, the HHI index. According to public estimates, the merger will increase the industry HHI by more than 650 points, to 2775.²¹ “Transactions that increase the HHI by more than 100 points in highly concentrated markets are presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission.”²² And the new HHI of 2775 is far in excess of Commission’s 1800 threshold.

Indeed, the \$13.25 billion Omnicom-IPG merger will create both the U.S. largest advertising agency and the “world’s largest advertising agency.”²³ It is also the largest merger in industry history.²⁴ The combined group, which will retain the Omnicom name under the proposal, will have net revenues of well over \$25.60 billion (based on 2023 figures) and a combined market

¹⁹ *Herfindahl-Hirschman Index*, U.S. DEP’T OF JUST. (last updated Jan. 17, 2024), <https://www.justice.gov/atr/herfindahl-hirschman-index>.

²⁰ Marty Swant, *Omnicom and IPG Acquisition Could Lead to Bigger AI Investments – and Maybe Rewards*, DIGIDAY (Dec. 10, 2024), <https://digiday.com/media-buying/omnicom-and-ipg-merger-could-lead-to-bigger-ai-investments-and-maybe-rewards/>; *see. e.g.*, Megan Graham, *Omnicom Group to Debut Tool Using Generative AI for Advertising Employees*, WALL ST. J. (June 19, 2023), <https://www.wsj.com/articles/omnicom-group-to-debut-tool-using-generative-ai-for-advertising-employees-4976424>.

²¹ Gideon Spanier, *Will the ‘Big Six’ Become the ‘Big Three’?*, MM+M (Mar. 20, 2025), <https://www.mmm-online.com/news/will-the-big-six-become-the-big-three/>.

²² *Herfindahl-Hirschman Index*, U.S. DEP’T OF JUST. (last updated Jan. 17, 2024), <https://www.justice.gov/atr/herfindahl-hirschman-index>.

²³ Jody Godoy, *FTC, Greenlights Omnicom-Interpublic Deal, Bars Coordination Over Political Content*, REUTERS (June 23, 2025), <https://www.reuters.com/sustainability/boards-policy-regulation/us-ftc-accepts-consent-order-omnicom-interpublic-merger-2025-06-23/>.

²⁴ Suzanne Vranica, *Omnicom to Acquire Interpublic in Deal That Will Reshape Advertising Industry*, WALL ST. J. (Dec. 9, 2024), <https://www.wsj.com/business/media/omnicom-to-acquire-interpublic-group-in-deal-that-will-reshape-advertising-industry-eed6f1b3>.

capitalization of over \$30 billion.²⁵ It is estimated that the enlarged group will have almost 37% market share in the U.S.²⁶

The reported revenues of Omnicom and IPG significantly understate the true financial influence these firms wield in the advertising market. Although neither company discloses the total advertising spend they manage for clients, industry estimates suggest agencies of their scale typically control media budgets up to ten times their annual revenues—placing their combined buying power and influence over media platforms at up to an approximate \$250 billion per year.

The new, combined entity—which will become the largest of the Big Six—will be able to leverage its newfound market power to increase its profits at the expense of employees, clients, and consumers. The combined group aims for \$750 million annually in cost synergies,²⁷ achievable because the new behemoth will be able to reduce headcount.²⁸ Omnicom and IPG have already reduced US headcount by thousands ahead of the merger.²⁹ Investors also report that the enlarged Omnicom intends to “function as a cohesive whole” rather than according to the previous holding-company model of loosely connected firms.³⁰ A conscious effort to take advantage of the enlarged group’s size will amplify the effect of consolidation on the firm’s behavior.

²⁵ Marketing & Sales Leader for a New Era, OMNICOM + INTERPUBLIC, at 11 (Dec. 9, 2024), https://s201.q4cdn.com/282904488/files/doc_downloads/2024/12/OMC-Investor-Presentation-12-09-24-FINAL.pdf.

²⁶ Gideon Spanier, *Will the ‘Big Six’ Become the ‘Big Three’?*, MM+M (Mar. 20, 2025), <https://www.mmm-online.com/news/will-the-big-six-become-the-big-three/>.

²⁷ Marketing & Sales Leader for a New Era, OMNICOM + INTERPUBLIC, at 4 (Dec. 9, 2024), https://s201.q4cdn.com/282904488/files/doc_downloads/2024/12/OMC-Investor-Presentation-12-09-24-FINAL.pdf.

²⁸ Suzanne Vranica, *Sorry Mad Men. The Ad Revolution is Here.*, WALL ST. J. (Dec. 13, 2024), <https://www.wsj.com/business/media/advertising-revolution-artificial-intelligence-data-mad-men-omnicom-interpublic-3c0c056b>; Lara O’Reilly, *The \$13 Billion Omnicom-IPG Megamerger Reflects a New Era as Big Tech and AI Upend the Ad Industry*, BUSINESS INSIDER (Dec. 9, 2024) <https://www.businessinsider.com/omnicom-ipg-deal-signals-major-shift-ad-agency-market-2024-12>.

²⁹ Gideon Spanier, *Will the ‘Big Six’ Become the ‘Big Three’?*, MM+M (Mar. 20, 2025), <https://www.mmm-online.com/news/will-the-big-six-become-the-big-three/>.

³⁰ Seb Joseph, *Bold Call: The Holdco Era is Over. The Operating Company Age is Here – For Real this Time*, DIGIDAY (Mar. 3, 2025), <https://digiday.com/marketing/the-holdco-era-is-over-the-operating-company-age-is-here-for-real-this-time/>.

Moreover, the proposed merger will likely create even further, downstream anticompetitive effects in the market by incentivizing the other four members of the remaining Big Five to act anticompetitively. With one fewer major player, the remaining firms face reduced competitive pressure to win business by lowering fees, improving quality, or innovating. Advertisers (the agencies' clients) will face a "substantial reduction in options,"³¹ which can weaken the market discipline that normally constrains pricing and conduct. The merger also heightens the risk of coordinated interaction among the few remaining advertising holdcos. When markets concentrate, it becomes easier for dominant firms to collude, tacitly or implicitly, rather than to compete.

Further still, the unprecedented scale of the enlarged Omnicom Group may encourage other participants in the remaining Big Five to pursue defensive mergers to maintain their market share. Scale is essential for media buying companies, allowing more leverage in negotiations with media owners.³² WPP, the third-largest member of the Big Five after the merger, is already reported to be a target for further consolidation,³³ and preliminary discussions are reportedly ongoing with Accenture.³⁴ There is precedent for this type of downstream, further consolidation in both the media and entertainment and healthcare industries. Disney's 2019 acquisition of 21st Century Fox prompted the Viacom-CBS and Warner-Discovery mergers³⁵; and CVS's 2018 acquisition of Aetna prompted Cigna to acquire Express Scripts and UnitedHealth to expand

³¹ Megan Graham, *Marketers Prepare to Navigate 'Huge Distraction' of Omnicom's IPG Acquisition*, WALL ST. J. (Dec. 11, 2024), <https://www.wsj.com/articles/marketers-prepare-to-navigate-huge-distraction-of-omnicoms-ipg-acquisition-b41c1932>.

³² Lara O'Reilly, *The \$13 Billion Omnicom-IPG Megamerger Reflects a New Era as Big Tech and AI Upend the Ad Industry*, BUSINESS INSIDER (Dec. 9, 2024) <https://www.businessinsider.com/omnicom-ipg-deal-signals-major-shift-ad-agency-market-2024-12>.

³³ *Blockbuster Ad Deal: Omnicom's Takeover of IPG to Reset Global Order*, STORYBOARD 18 (Dec. 10, 2024), <https://www.storyboard18.com/brand-makers/blockbuster-ad-deal-omnicoms-takeover-of-ipg-to-reset-global-order-49865.htm>.

³⁴ Gideon Spanier & Bärbel Egli-Unckrich, *Accenture and WPP Have Discussed Potential M&A Deal*, MM+M (July 15, 2025), <https://www.mmm-online.com/news/accenture-and-wpp-have-discussed-potential-ma-deal/>.

³⁵ Alex Sherman, *Here are the Next Media Mergers that Make the Most Sense*, CNBC (May 29, 2021), <https://www.cnbc.com/2021/05/29/media-mergers-whos-next-.html>.

Optum through acquisitions.³⁶ And even Even if no defensive mergers occur, the scale of the enlarged Omnicom Group may push smaller market participants Dentsu and Havas into near-irrelevance, shifting towards a “big three” model.³⁷

This wealth of evidence overwhelmingly suggests that the Commission would have had ample justification to deny Respondents’ proposed merger as violative of the Clayton and FTC Acts.

III. The Proposed Merger’s Anticompetitive Effects Would Be Compounded by Respondents’ Demonstrated Propensity Towards Politically-Motivated Censorship.

The degree of market concentration that the proposed merger will yield—and the amount of anticompetitive power the new Omnicom entity will wield—provide reason enough for concern. But even more troubling is the danger that Omnicom will use this newfound concentrated power to silence the voices of media outlets it disagrees with for ideological reasons, thereby reducing the ideological diversity and product variety available to consumers in the media market.

The proposed order acknowledges that the Omnicom-IPG merger “increase[s] the likelihood of coordination among competitors in the Media Buying Services industry relating to the placement of advertisements based on political or ideological viewpoints.”³⁸ But the order does not meaningfully address the serious issues of DEI-based news ratings, reliability monitors and so called fact checkers. While the order singles out “exclusion lists,” many media monitors do not claim they employ those lists.

³⁶ *PBM Mergers – Acquisitions – Contracts Timeline*, NATIONAL COMMUNITY PHARMACISTS ASSOCIATION, https://ncpa.org/sites/default/files/2023-02/PBM%20MergerTimeline_2023.pdf.

³⁷ Gideon Spanier, *Will the ‘Big Six’ Become the ‘Big Three’?*, MM+M (Mar. 20, 2025), <https://www.mmm-online.com/news/will-the-big-six-become-the-big-three/>.

³⁸ Proposed Order, *In the Matter of Omnicom Grp. Inc., & The Interpublic Grp. of Cos., Inc.*, at 6 (F.T.C.).

Both Omnicom and IPG, for example, currently use the services of NewsGuard,³⁹ an organization that publishes what it calls “reliability ratings” of news outlets.⁴⁰ Omnicom purports to use NewsGuard’s rankings to “[keep] ads off misinformation sites,”⁴¹ and IPG likewise has stated that it will not “fund partners or content that spread misinformation.”⁴² But NewsGuard has been widely criticized for political bias against conservative news sources.

In three separate studies, the Media Research Center (“MRC”) has found that NewsGuard ranks left-leaning media outlets significantly higher than conservative ones on its “reliability” scale. The MRC found that “[l]iberal outlets were rated 27 points higher on average than news organizations on the right. . . . The average NewsGuard score for the ‘left’ and ‘lean left’ outlets—which included leftist outlets like Jacobin and The Nation—was 93/100. While the average rating for ‘right’ and ‘lean right’ outlets—which included Fox News, *Washington Times* and *New York Post*—was a low 66/100.”⁴³ Indeed, the socialist outlet Jacobin received a 92.5 ranking by NewsGuard, while it gave the right-leaning outlet The Federalist a score of 12.5.⁴⁴

Others have echoed these concerns. George Washington University Law School Professor Jonathan Turley has criticized NewsGuard “as one of the most sophisticated operations being

³⁹ *IPG Mediabrands Strikes Exclusive Deal with Newsguard to Go Beyond Website Ratings to Rate Individual Cable and Broadcast TV News Show*, IPG MEDIABANDS, (Dec. 2, 2021), <https://www.ipgmediabrands.com/ipg-mediabrands-strikes-exclusive-deal-with-newsguard-to-go-beyond-website-ratings-to-rate-individual-cable-and-broadcast-tv-news-shows/>; Image posted by OMD USA (@omd_usa), INSTAGRAM, (Apr. 5, 2021), https://www.instagram.com/p/CNS9XmtBanO/?utm_source=chatgpt.com.

⁴⁰ *Website Rating Process and Criteria*, NEWSGUARD (last updated Feb. 3, 2023), <https://www.newsguardtech.com/ratings/rating-process-criteria/>.

⁴¹ Tanya Dua, *IPG and Omnicom are Touting a New Tool to Help Advertisers Avoid Misinformation without Hurting Publishers*, BUSINESS INSIDER (Mar. 30, 2021), <https://www.businessinsider.com/ipg-and-omnicom-are-using-newsguard-tools-that-protect-publishers-2021-3>.

⁴² *Mediabrands Introduce Media Responsibility Principles*, IPG MEDIABANDS, (July 13, 2020), <https://www.ipgmediabrands.com/mediabrands-introduces-media-responsibility-principles/>.

⁴³ Joseph Vazquez, *STUDY: NewsGuard Ratings System Heavily Skews in Favor of Left-Wing Outlets*, MRCNEWSBUSTERS (Dec. 13, 2021), <https://www.newsbusters.org/blogs/free-speech/joseph-vazquez/2021/12/13/study-newsguard-ratings-system-heavily-skews-favor-left>.

⁴⁴ *Id.*

used to ‘white list’ and ‘black list’ sites” and as part of “a massive censorship system.”⁴⁵ Texas Attorney General Ken Paxton and news outlets the Daily Wire, and the Federalist sued the State Department in 2023 in part over its promotion of NewsGuard’s rankings, which the lawsuit alleged were nothing more than “blacklists of ostensibly risky or unreliable American news outlets [published] for the purpose of discrediting and publish favored viewpoints.”⁴⁶ Federal Communications Commission Chairman Brendan Carr has stated that NewsGuard “leverage[es] its partnerships with advertising agencies to effectively censor[] targeted outlets,” and has raised questions about whether it employs its rankings in a “good faith” and “even-handed manner.”⁴⁷ For example, Chairman Carr noted that NewsGuard “has consistently rated official propaganda from the Communist Party of China as more credible than American publications,” and that it “aggressively fact checked and penalized websites that reported on the COVID-19 lab leak theory.”⁴⁸

According to its critics, NewsGuard derives its biased results by basing its rankings on amorphous and manipulable criteria. One of its nine criteria, for example, asks whether a site “repeatedly publish[es] false or egregiously misleading content” such as “conspiracy theories.”⁴⁹ But the line between an “egregiously false” “conspiracy theory” and a simple mistake is self-evidently subjective. Another criterion asks whether the site “egregiously distorts or misrepresents facts.”⁵⁰ What counts as an “egregious[] distort[ion]” is, again, clearly a subjective measure subject to manipulation. Yet another of the criteria asks whether the site uses “opinionated language” or “advances a particular point of view through clearly one-sided story selection.”⁵¹ The fact that NewsGuard gives outlets such as Jacobin, BuzzFeed News, and Mother

⁴⁵ Jonathan Turley, *The Most Chilling Words Today: I’m From NewsGuard and I am Here to Rate You*, THE HILL (July 27, 2024), <https://thehill.com/opinion/civil-rights/4795501-newsguard-censorship-conservative-speech/>.

⁴⁶ Complaint at ¶ 3, *The Daily Wire, LLC, v. Dep’t of State*, No. 23-cv-609 (E.D. Tex. Dec. 6, 2023).

⁴⁷ Letter from Brendan Carr, Commissioner, FTC, to Sundar Pichai, *et al.* (Nov. 13, 2024), <https://www.fcc.gov/sites/default/files/DOC-407732A1.pdf>.

⁴⁸ *Id.*

⁴⁹ *Website Rating Process and Criteria*, NEWSGUARD (last updated Feb. 3, 2023), <https://www.newsguardtech.com/ratings/rating-process-criteria/>.

⁵⁰ *Id.*

⁵¹ *Id.*

Jones high reliability scores itself conclusively demonstrates how easily this measure may be manipulated.

Omnicom and IPG have manifested their anti-conservative bias in other ways as well. Both use third-party “fact-checkers” that purport to publish neutral evaluations of salient factual claims but, in reality, are frequently themselves subject to severe political—predominately leftist—bias.⁵² And as the Commission’s Complaint in this matter recounts, Omnicom, IPG, and the other major ad agencies appear to have also used the World Federation of Advertisers’ Global Alliance for Responsible Media as a way to stifle speech. “Major advertisers have discussed and ultimately declined to advertise on certain websites and applications. These decisions appear to have been coordinated through one or more associations of advertising industry players, including ad agencies,” such as the “World Federation of Advertisers’ Global Alliance for Responsible Media (“GARM”) initiative.”⁵³ GARM has worked to “reduc[e] the availability and monetization of harmful content online”—with “[t]he supposedly harmful content typically” comprised of “websites and outlets that, in GARM’s view, promoted ‘misinformation’—a nebulous term that was ultimately used to sweep in many types of legitimate political speech.”⁵⁴

Ideologically-motivated collusion by the biggest ad agencies like Respondents to direct ad revenue away from media outlets they disfavor has a devastating censorial effect that not only harms competition in the media markets but diminishes the richness of the nation’s civic discourse. Advertising revenue is the lifeblood of many news outlets, particularly outlets that operate online. And when the largest ad agencies have the ability to act collusively to deny this revenue, the effect can be fatal. As the Commission’s complaint notes, “[w]hen a Media Buying Services firm *unilaterally* refuses to buy advertising inventory from certain publishers, that firm must confront the risk that its rivals will gain a competitive advantage by continuing to buy advertising inventory from those publishers. On the other hand, a *concerted* (or otherwise coordinated) refusal to deal among Media Buying Services firms provides a direct economic benefit to the firms by ensuring that they are not competitively disadvantaged relative to their

⁵² Thomas A. Colicchio, *et al.*, *Bias in Fact Checking?: An Analysis of Partisan Trends Using PolitiFact Data*, DUKE UNIV. (2023), <https://dukespace.lib.duke.edu/server/api/core/bitstreams/95100bba-7bfd-4fce-83e8-eb6b5b508bf4/content>.

⁵³ Compl., *In the Matter of Omnicom Grp. Inc., & The Interpublic Grp. of Cos., Inc.*, at 4 (F.T.C.), https://www.ftc.gov/system/files/ftc_gov/pdf/2510049omnicomcomplaint.pdf.

⁵⁴ *Id.*

rivals, which are likewise foregoing the opportunity to reach potential audiences on the boycotted publishers' platforms."⁵⁵

Respondents' demonstrated history of employing their already-significant market power to achieve apparently ideologically-motivated ends significantly heightens the concerns over the immense concentration of market power that the new, combined Omnicom will wield if the proposed merger is approved.

IV. If the Commission Allows the Proposed Acquisition, it Should Impose More Stringent Conditions to Guard Against these Harmful Effects.

As noted, we believe the anticompetitive risks of Respondents' proposed merger are of such magnitude that the Commission would be warranted in denying it outright. If the Commission does allow the merger to go forward, however, it should impose stringent conditions to guard against those risks—conditions far more stringent than the ones contained in the current proposed order.

Most importantly, the Commission should impose conditions that ensure that the new Omnicom entity can no longer use biased rating organizations, fact checkers, and other third-parties to engage in censorship of disfavored news outlets. It should do so through a condition providing that Omnicom must itself internally conduct any assessment, in consultation with advertisers, of the reliability of an outlet, or of its publications, rather than relying on the assessment of any third party media monitoring organization or entity. The condition should also require Respondents to acknowledge that they have previously worked with third-party entities such as NewsGuard to engage in politically-motivated censorship. Astonishingly, neither Omnicom nor IPG has acknowledged their responsibility for such past conduct. They cannot be trusted to act fairly and responsibly in the future—with the greater market power they will now wield—until they do so.

The Commission should also extend the requirement of annual compliance reports for the full ten-year term of the decree rather than the existing five years. Because the merger may prompt further consolidation or shakeups in the media buying space, competitive dynamics may continue to shift over the short- to medium-term. Further consolidation could make anticompetitive misbehavior easier. As such, the Commission should extend its timeline for monitoring.

Third, the Commission should require Omnicom and IPG to formally acknowledge that they have engaged in conduct inconsistent with federal law through the implementation and enforcement of Diversity, Equity, and Inclusion (DEI) programs and related advertising practices, as referenced in the Consent Order. These actions include, but are not limited to, the use of

⁵⁵ *Id.*

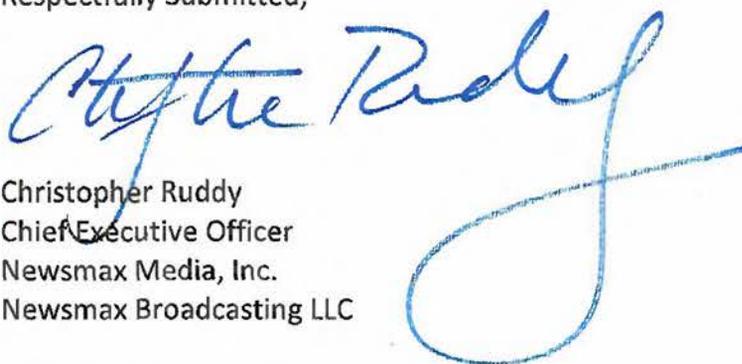
identity-based criteria—such as race, gender, or political viewpoint—in the allocation of advertising expenditures and the exclusion of certain media outlets from commercial consideration based on viewpoint or ownership demographics. Both companies must ban such programs and practices and agree not to re-start such programs.

Such DEI practices constitute unlawful discrimination under Title VII of the Civil Rights Act of 1964 and are in direct contravention of Executive Order 14173. Moreover, they have caused significant and quantifiable financial harm to affected media organizations, particularly those excluded from advertising campaigns or blacklisted by the Companies' DEI-related media filters and third-party scoring mechanisms.

Accordingly, the Commission should pursue monetary relief in the form of restitution. A minimum of two hundred fifty million dollars (\$250,000,000) should be sought from the Companies to be distributed equitably among media outlets that were improperly denied access to advertising revenues as a result of these discriminatory practices.

Finally, the Commission should appoint an independent monitor to review Respondents' conduct, compliance, and annual compliance reports. Appointing an independent third-party monitor in addition to Commission review is preferable, because agency review of compliance often depends on whistleblowers, which may not be forthcoming. An independent, third-party monitor will ensure continued compliance with the Commission's conditions for their full, ten-year duration. The monitor should also be empowered to create a committee to oversee the aforementioned restitution fund and the distribution of funds to aggrieved parties.

Respectfully Submitted,



Christopher Ruddy
Chief Executive Officer
Newsmax Media, Inc.
Newsmax Broadcasting LLC

Exhibit 21

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Newsmax's Tobacco Slams FTC Approval of Omnicorn-IPG Merger

Ad 1 of 1



By Newsmax Wires | Sunday, 03 August 2025 07:23 AM EDT



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Newsmax analyst John Tabacco has sharply criticized the Federal Trade Commission's (FTC) approval of a \$13.25 billion merger between advertising giants Omnicom Group and Interpublic Group, saying the decision "stinks at all levels."

The merger, approved in June, creates what is now considered the world's largest advertising agency with control over roughly \$240 billion in U.S. ad spending.

Newsmax Media, Inc. on Monday [formally filed comments](#) with the FTC opposing the deal, joining other conservative groups that say it threatens free speech and will deepen alleged censorship of right-leaning media.

Tabacco, host of Newsmax's "Wise Guys," voiced his concerns during an appearance Friday on the "Chris Salcedo Show," arguing the approval will allow advertising firms to continue using ratings services that target conservative outlets.

"It says nothing at all in the [Consent] Order about stopping these agencies from using third-party ratings services like NewsGuard to block media like Newsmax and other conservative companies," Tabacco said.

Under the FTC's Consent Order, Omnicom and IPG agreed not to collude with other firms to steer advertising away from outlets based on political or ideological viewpoints.

However, critics say the order fails to address practices involving ratings organizations such as NewsGuard and the Global Disinformation Index (GDI), which have been accused of labeling conservative media as unreliable.

Tabacco cited multiple studies by the Media Research Center claiming conservative outlets receive consistently low reliability scores, while left-leaning and even foreign state media, including Chinese Communist Party publications, score higher.

THE NEW YORK TIMES can get the story about HUNTER BIDEN'S laptop wrong, push the Russia hoax, falsely accuse Israel of bombing hospitals in Gaza — and they get 100% or nearly 100% ratings,” Tabacco said. “It makes no sense unless this was political.”

Newsmax’s filing with the FTC was [joined by the Conservative Political Action Conference \(CPAC\)](#) Foundation and the Independent Media Council (IMC), organizations that collectively represent more than 100 million Americans.

Their submissions argue that the FTC’s approval and the Consent Order violate federal law and recent executive orders, particularly for failing to address the companies’ vast diversity, equity and inclusion (DEI) initiatives.

Tabacco noted that FTC Chair Andrew Ferguson was appointed by President Trump but previously was chief counsel to Sen. Mitch McConnell, R-Ky., from 2019 until 2021.

In 2023, with McConnell’s support, Ferguson was nominated for the FTC under President Joe Biden.

Ferguson’s decision to approve the merge has not only stunned conservative leaders, but also FTC insiders who were surprised he expedited the merger’s approval before the Commission’s investigation had been completed.

Newsmax, CPAC and the IMC have urged the Trump administration to reconsider the merger approval or reconstitute the Consent Order to include more protections against censorship and provide restitution to conservative media for the damages they incurred by the advertising agencies actions.

Related Stories:

- **[CPAC, IMC Want FTC to Stop Omnicom-IPG Merger](#)**

Exhibit 22



NEWSMAX
@NEWSMAX



Re-read FTC Consent Order, makes no mention of 'censorship' or 'targeting conservatives.' Fully allows Omnicom to use left-wing NewsGuard, GDI.

Consent Order violates Trump EO on stopping DEI at Omnicom.

Newsmax, CPAC oppose FTC sellout.

9:58 PM · Jul 31, 2025 · **2,225** Views



Exhibit 23

1. Respondent Omnicom Group Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal executive offices located at 280 Park Avenue, New York, New York 10017.
2. Respondent The Interpublic Group of Companies, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 909 Third Avenue, New York, New York 10022.
3. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Omnicom” means Omnicom Group Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Omnicom Group Inc., including Omnicom Media Group, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Effective Date Omnicom will include IPG.
- B. “IPG” means The Interpublic Group of Companies, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by The Interpublic Group of Companies, Inc., including Mediabrands, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Advertiser” means any customer or potential customer of Media Buying Services from Omnicom or IPG.
- D. “Covered Bases” means (1) Political or ideological viewpoints (including viewpoints as to the veracity of news reporting or other politically or ideologically contested facts, such as their characterization as “misinformation,” “disinformation,” “bias,” or similar terms); (2) adherence to journalistic standards or ethics established or set by a Third Party; and/or (3) commitment or adherence to diversity, equity or inclusion (DEI), such as diverse ownership or casting. Covered Bases shall not include fraudulent content.
- E. “Effective Date” means the date on which the acquisition of IPG by Omnicom is consummated, and the date on which the obligations described in Sections II, III, IV, and V will enter into force.
- F. “Mediabrand” means the network within IPG responsible for Media Buying Services.

- G. “Media Buying Services” means purchases of advertising inventory across any type of media and types of purchases on behalf of, or for later resale to, Advertisers, but does not include other media services sold or billed separately, such as media planning or campaign management.
- H. “Media Publisher” means any seller of advertising inventory, including a website, application, broadcaster, or publisher to Omnicom or IPG.
- I. “Omnicom Media Group” means the network within Omnicom responsible for Media Buying Services.
- J. “Political or ideological viewpoints” includes the Media Publisher’s political or ideological viewpoints, the political or ideological viewpoints expressed in content that the Media Publisher sells advertising to run alongside of, or the political or ideological viewpoints expressed in any content or by any person.
- K. “Relevant Area” means the United States.
- L. “Other means of differentiating between Media Publishers” shall include, among other things, rating, ranking, or evaluating Media Publishers according to Covered Bases, and “Third Parties” shall include, among other things, individuals and entities that engage in such practices.

II. Prohibited Conduct

IT IS FURTHER ORDERED that, after the Effective Date:

- A. Respondent Omnicom, in connection with its activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall cease and desist from, directly or indirectly, continuing, entering or attempting to enter into, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce any agreement, understanding, rule or practice, with any Third Party with respect to Media Buying Services in the Relevant Area that:
 - 1. Directs Advertisers’ advertising spend based on Covered Bases (other than as required by applicable laws);
 - 2. Refuses Advertisers’ requests to direct advertising spend to a Media Publisher based on Covered Bases (other than as required by applicable laws); or
 - 3. Declines to deal with Advertisers based on Covered Bases (other than as required by applicable laws);

PROVIDED, HOWEVER, that this Paragraph II.A shall not apply to any agreement or discussion between Omnicom and an Advertiser (or vendors, subcontractors, or similar service providers on behalf of the Advertiser) relating to how to direct that Advertiser’s advertising spend.

- B. Respondent Omnicom shall cause Omnicom Media Group, the entities that operate as part of Omnicom Media Group, Mediabrands, and the entities that operate as part of Mediabrands, not to rely on exclusion lists, inclusion lists, or Other means of differentiating between Media Publishers in the Relevant Area on the basis of Covered Bases to determine or direct Advertisers' advertising placements. Omnicom shall not knowingly encourage or solicit Third Parties to create such means of differentiation on Omnicom's behalf that it itself would be prohibited from creating under this Order.
- C. Notwithstanding the foregoing, exclusion lists, inclusion lists, or Other means of differentiating between Media Publishers developed at the express direction of a particular client, including those developed on the basis of Covered Bases, are expressly permitted; provided, however, that Omnicom will not offer any client's exclusion list or inclusion list to another client or Third Party, nor will it knowingly encourage or solicit Third Parties to do so.
- D. To the extent such prohibited practices currently exist upon the Effective Date, Omnicom must promptly abolish them.

Nothing in this Order shall prohibit or prevent Omnicom or IPG from making day-to-day unilateral business decisions in the ordinary course, consistent with past practice, including but not limited to decisions on whether to pursue particular client business, so long as Omnicom and IPG do not violate the provisions of this Order.

III. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent Omnicom shall notify Commission staff via email at bccompliance@ftc.gov of the Effective Date no later than 5 days after its occurrence; and
- B. Respondent Omnicom shall file verified written reports ("Compliance Reports") in accordance with the following:
 - 1. Respondent Omnicom shall submit:
 - a. an annual Compliance Report one year after the date this Order is issued, and annually for the next 4 years on the anniversary of that date; and
 - b. additional Compliance Reports as the Commission or its staff may request.
 - 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent Omnicom is in compliance with this Order. Conclusory statements that Respondent Omnicom has complied with its obligations under this Order are insufficient. Respondent Omnicom shall include in its Compliance Reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondent

Omnicom has implemented or plans to implement to ensure that it has complied or will comply with each Section of this Order, including a list setting forth the number of times a publisher appears on “exclusion lists” developed or applied by Omnicom Media Group at the express direction of a particular client based on political ideology (as permitted by Section II of this Order).

- a. For a period of 5 years after filing a Compliance Report, Respondent Omnicom shall retain all final versions of material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent Omnicom’s obligations under this Order during the period covered by such Compliance Report. Respondent Omnicom shall provide copies of these documents to Commission staff upon request.
- b. Respondent Omnicom shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent Omnicom shall file its Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondent Omnicom shall provide a copy of each Compliance Report to the Monitor if the Commission has appointed one in this matter.

IV. Monitor

IT IS FURTHER ORDERED that:

- A. Omnicom shall appoint, with the consent of Commission staff, which consent shall not be unreasonably withheld, a Monitor to observe and report on Respondent Omnicom’s compliance with its obligations as set forth in this Order. Within 30 days of the date this Order is issued, Omnicom shall notify the Commission staff via email at bccompliance@ftc.gov of the identity of the proposed Monitor. Commission staff will have 30 days to give or deny consent to the appointment of that monitor. Upon a denial, Omnicom shall have 15 days to propose a new monitor, at which point Commission staff will have another 30 days to give or deny consent. This process will repeat until a monitor is appointed. If after three months Commission staff and Omnicom cannot agree on the appointment of a monitor, the roles will reverse, with the Commission proposing and Omnicom consenting, and Omnicom will not unreasonably withhold consent. Omnicom and the Monitor may enter into an agreement relating to the Monitor’s services. Any such agreement:
 1. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section IV, and to the extent any provision in the agreement varies from or conflicts with any provision in this Section IV, Omnicom and the Monitor shall comply with the provisions of this Section IV; and

2. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of this Order, and to the extent any provision in the agreement varies from or conflicts with any provision in this Order, Omnicom and the Monitor shall comply with this Order.
- B. The Monitor shall:
1. Have the authority to monitor Omnicom's compliance with the obligations set forth in this Order by reviewing the compliance reports submitted pursuant to Section III and requiring Omnicom to respond to inquiries regarding the information contained therein;
 2. Receive complaints from nonparties regarding Omnicom's compliance with this Order;
 3. Act in consultation with the Commission or its staff;
 4. Serve without bond or other security;
 5. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict; provided, however, that the Parties agree that the fact that the Monitor is employed by Omnicom does not alone trigger this provision. If the Monitor becomes aware of such a conflict only after it has arisen, the Monitor shall notify staff of the Commission as soon as the Monitor becomes aware of the conflict; and
 6. Report in writing to the Commission concerning Omnicom's compliance with this Order annually on a date determined by Commission staff.
- C. The Monitor shall serve for a period of 5 years after the date this Order is issued, provided however, that the Chairman of the Commission may at any time terminate the requirement to have a Monitor if he concludes that a Monitor is no longer necessary to accomplish the purposes of the Order.
- D. The Monitor shall report to the Chief Executive Officer of Omnicom. If the Monitor raises a concern about Omnicom's compliance with this Order to the Chief Executive Officer and the Monitor is not satisfied with the Chief Executive Officer's response, the Monitor shall notify the Board of Directors.
- E. Respondent Omnicom shall:
1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Omnicom's compliance with its obligations under this Order, including as requested by the Monitor, providing the Monitor full and complete access to personnel, information and facilities;
 2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to this Order;
 3. Pay the Monitor an annual salary for the duration of the Monitor's employment on the same regular cadence as other Omnicom employees in the United States;

4. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under this Order, except to the extent the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor; and
 5. Not terminate the Monitor's employment or status as Monitor, except (a) with the consent of Commission staff or (b) for serious misconduct, such as the disclosure of confidential information to external parties other than the Commission. Upon such termination, or the departure of the Monitor for another reason, Omnicom will have 30 days to propose a replacement monitor, restarting the process detailed in IV.A.
- F. Omnicom may require the Monitor to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on Omnicom's compliance with this Order.

V. Change in Respondent

IT IS FURTHER ORDERED that Omnicom shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of Omnicom Group Inc.;
- B. The proposed acquisition, merger, or consolidation of Omnicom Group Inc.; or
- C. Any other organizational change in Omnicom, including the transfer, sale, or dissolution of subsidiaries, if such change may materially affect compliance obligations arising out of this Order.

VI. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Respondent Omnicom, Respondent Omnicom shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Omnicom and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Omnicom related to compliance with this Order, which copying services shall be provided by Omnicom at its expense; and
- B. To interview officers, directors, or employees of Omnicom, who may have counsel present, regarding matters related to compliance with this Order.

VII. Cooperation Agreement

IT IS FURTHER ORDERED that Omnicom agrees to cooperate with the Commission in any investigation into (a) Omnicom's compliance with the Order and (b) any investigation or litigation relating to Media Buying Services, advertising, or similar matters, including by making employees available for interviews or testimony, facilitating interviews with former employees, accepting service of any compulsory process, not unreasonably objecting to or seeking to quash any such compulsory process, and voluntarily providing and authenticating documents and data reasonably sought by the Commission.

VIII. Purpose of Order

IT IS FURTHER ORDERED that the purpose of this Order is, among other things, to address the theories of harm to competition alleged by the Commission in its Complaint including that the acquisition of IPG by Omnicom increased the likelihood of coordination among competitors in the Media Buying Services industry relating to the placement of advertisements based on Political or ideological viewpoints.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission, Commissioner Meador recused.

April J. Tabor
Secretary

SEAL:
ISSUED: September 26, 2025