**PART I**

**STRATEGY AND THE NONMARKET ENVIRONMENT**

**Chapter 1**

**Market and Nonmarket Environments**

The objectives of this chapter are to introduce the concept of the nonmarket environment, provide frameworks for characterizing that environment, and present a framework for understanding the development of nonmarket issues. The nonmarket environment is characterized by the four Is: issues, interests, institutions, and information. This characterization is illustrated in some detail for the automobile industry. The emphasis of the approach maintained throughout the book is on nonmarket strategy; i.e., actions by managers to improve the performance of their firms in both their market and nonmarket environments.

The field of business and its environment focuses on the nonmarket environment of business and its interrelationships with the market environment. To illustrate the perspective presented in Figure 1-1, an example involving Pizza Hut is presented below. The basic unit of analysis is a nonmarket issue, and in the Pizza Hut example the issue is how to open the institutional (hospitals, schools, etc.) market to fresh pizza. The auto industry example in the chapter illustrates the types and range of issues facing an industry.

This chapter also presents a characterization of the pattern of development of a nonmarket issue and discusses the causes of change in the nonmarket environment and how issues are placed on the nonmarket issue agenda. The nonmarket issue life cycle in Figure 1-2 is a useful framework for thinking about where an issue presently is and how it could develop. It is important to emphasize, however, that the focus of the book is how firms and their managers can participate effectively and responsibly in influencing the development of those issues.

A lecture based on Chapter 1 might begin with Figure 1-1 and illustrate the interactions between the market and nonmarket environments using the auto industry as an example. In an introductory lecture it is important to discuss those factors that distinguish the nonmarket environment from the market environment. Issues such as fuel economy standards have clear implications for the design and marketing of autos and for the likely success of U.S. and foreign manufacturers. (Fuel economy standards are considered in more detail in the Part II integrative case *Fuel Economy Standards 2007.* Environmental issues, such as global warming and emissions of pollutants, can also be used to illustrate these interrelationships. The safety issue can be used to point to the presence of interest and activist groups and their role in the nonmarket environment. (Activists and NGOs are considered in more detail in Chapter 4.) The Pizza Hut example presented below can also be used to illustrate the interrelationships.

In discussing nonmarket issues and the nonmarket environment, it is important to emphasize the role of managers both in addressing the issues and in formulating strategies. That is, management is in the center of Figure 1-1. Specialists, such as lawyers and consultants, can be important resources, but managers ultimately must make the decisions. In part because managers are at the center of decision-making, the appropriate level of analysis is organizational; i.e., from the point of view of a firm dealing with an issue in its environment. The unit of analysis is thus the conjunction of a nonmarket issue and the firm.

The roles of institutions and interest groups should also be pointed out, although they are not considered in detail until subsequent chapters. It would be useful to emphasize that institutions are not only formal and public, such as Congress and NHTSA, but are also private, such as arbitration mechanisms, or collections of private organizations as in the case of the news media (considered in Chapter 3). The Pizza Hut example can be used to illustrate the role of institutions and how an issue can move from one institutional arena to another.

The chapter first characterizes the nonmarket environment in terms of the 4 Is. *The Nonmarket Environment of McDonald’s* case provides an opportunity to consider this characterization. Another possibility is to discuss the origins of nonmarket issues such as those for the auto industry or those on McDonald’s agenda. Some of those issues are the result of scientific discovery and technological change and some are the result of new understandings. For example, the concerns about the fat and salt content of fast foods are a result of both recent medical studies and the heightened concern of many people about their health. The chapter case *The Nonmarket Environment of Google* presents a set of issues that pose challenges for Google including operating in China, a controversial acquisition, and intellectual property protection.

Many nonmarket issues arise because of moral concerns, and those moral concerns are the subject of Part V of the book. The Graduation Cards example illustrates the connection between moral concerns and the development and progress of nonmarket issues. Additional information on the example is presented below.

The nonmarket issue life cycle depicted in Figure 1-2 reflects a progression for many issues. It begins with the origins of the issue and its identification by what are referred to here as interest groups. The auto safety example is a good illustration of the simple origins of an issue and how it may progress over an extended period of time. In the discussion of the cases, it is often useful to assess where an issue is in its issue life cycle. It is also useful to illustrate in which institutional arenas an issue is considered at the various stages in its development. An important point to make in discussing nonmarket issues is that the firm rarely has control over events or the resolution of a nonmarket issue. Instead, a firm has control over its nonmarket strategy, and that strategy may influence the resolution of the issue. Nonmarket issues are generally contested, and their resolution is often determined by a competition of strategies of the interests participating in the contest.

**Beginning the course:** In addition to the cases in Chapter 1, the Chapter 2 cases provide good vehicles for focusing on nonmarket strategy.

**An Example of the Interactions of Market and Nonmarket Strategies: Pizza Hut**

This example illustrates the use of nonmarket strategies to shape market opportunities (Figure 1-1). (Figure 2-2 illustrates the control of market opportunities by government.)

School cafeterias served nearly $500 million of pizza a year. Only frozen pizza was used, however, because freshly prepared pizza was effectively excluded by a U.S. Department of Agriculture (USDA) regulation that required inspection of any pizza with meat toppings that was sold at wholesale for resale. The same was true for other institutions such as hospitals and prisons. The broader issue was the closure of the institutional market to freshly-prepared foods such as pizza and other fast foods.

Pizza Hut’s overall business strategy was to become a “pizza distribution” company, and the institutional market was crucial to that strategy. According to Roger Rydell of Pizza Hut, schools were “‘a potentially enormous business for us. … We’d like to have every one of our [4,000] delivery-capable units nationwide serving at least one school.”’[[1]](#footnote-1) Since Pizza Hut was excluded from the institutional market by the USDA regulation, the task before Pizza Hut was to develop a nonmarket strategy to modify this regulation to allow school cafeterias and ultimately other institutions to order fresh pizza.

There were two basic institutional arenas in which Pizza Hut could address this nonmarket foreclosure of a market. One was the regulatory apparatus of the USDA. From the perspective of a bureaucracy such as the USDA, an exemption from its meat inspection responsibilities would be required. It seems unlikely that the USDA would want to weaken its own inspection program. Indeed, the opponents of an exemption for fresh pizza, as led by the National Frozen Pizza Institute, sought to have the contentious issue resolved by the USDA. A resolution in that institutional arena would necessitate an extensive administrative process requiring public hearings, publication of proposed regulations in the *Federal Register*, a comment period, possible adoption of an exemption, and possible legal challenge in the federal courts by the losing side. This process would likely be quite lengthy. (See Chapter 10 for a discussion of this process.) Pizza Hut first attempted to obtain a USDA exemption without an administrative process but failed in its attempt.

The second institutional arena was Congress, which could enact legislation to overturn regulations. Pizza Hut worked through Congress to include a provision in a 1991 agriculture bill that would allow fresh pizza to be purchased by school cafeterias without USDA inspection. The amendment directed the USDA to issue regulations by August 1992 allowing fresh pizza with meat toppings to be sold to private and public institutions.[[2]](#footnote-2) Pizza Hut had headquarters in Wichita, Kansas, and Representative Dan Glickman, whose district includes Wichita, commented that the USDA regulation was “a Byzantine, outdated and, quite honestly, an anti-competitive regulatory structure.”[[3]](#footnote-3)

One question was whether this issue was resolved by interest group politics or by some public policy process based on a careful study of the costs and benefits. The opposition, for example, argued that an exemption posed a health hazard, whereas Pizza Hut argued that precooked toppings such as pepperoni had already undergone two inspections—one at the processing plant and one earlier at the slaughterhouse. These arguments likely had little effect on the decision other than to convince members of Congress that there was no health hazard in fresh pizza sold to institutions. This issue was ultimately resolved through interest group politics, with Pizza Hut and other fast-food chains backing the exemption and frozen pizza interests opposing it.

The actual process through which the amendment was adopted began in the House Committee on Agriculture. The committee was in a public mark-up session on H.R. 3029, sponsored by Representative De La Garza (D-TX), entitled the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and the Recreational Hunting Safety and Preservation Act of 1991. Representative Glickman introduced an amendment that would change the standard for fresh pizza with meat toppings furnished in school lunch programs. After discussion, Glickman withdrew the amendment and offered another that would exempt fresh pizza with meat toppings from a final inspection by the USDA and directing the USDA to adopt new rules to allow this. That amendment was approved on a voice vote.

The final bill incorporated the needed provisions in Section 1016 of Title X -- Miscellaneous Technical Corrections. The provisions made changes in Section 23 of the Federal Meat Inspection Act (21 U.S.C. 623) and Section 15 of the Poultry Products Inspection Act (21 U.S.C. 464). As an example of the language enacted, the changes for meat stated, “the Secretary [of Agriculture] shall exempt pizzas containing a meat food product from the inspection requirements of this Act if -- (A) the meat food product components of the pizzas have been prepared, inspected, and passed in a cured or cooked form as ready-to-eat in compliance with the requirements of this Act; and inspected, and passed in a cured or cooked form as ready-to-eat in compliance with the requirements of this Act; and (B) the pizzas are to be served in public or private nonprofit institutions.”

The amendment providing the exemption was referred to as the Pizza Hut amendment.

**Update on the Graduation Cards Example**

Hallmark’s marketing of the graduation cards featuring alcoholic beverages was quickly met with protests by the Orange County, California, chapter of MADD. According to *Newsweek*, “Since then MADD activists across the country have lobbied store owners to pull offending cards that had been shipped already off their shelves. ... Hallmark spokeswoman Diane Wall says the cards were aimed at adults finishing college. But MADD’s Janet Cater says they were bought just as often for younger high-school and college graduates. ‘The reality is more people graduate under 21 than any other age group,’ Cater says.”

Hallmark quickly agreed to stop producing the cards and not to ship any cards that had already been produced. “Hallmark has made a corporate decision to no longer manufacture graduation cards with reference to alcohol. Graduation cards of this type represented only 1 percent of the graduation card line this year.” (Letter from Diane Wall, Hallmark Cards, August 22, 1988.)

Although this issue was resolved, one consequence of Hallmark’s actions was that interest groups may now begin to monitor its cards for objectionable material. That is, Hallmark’s nonmarket environment could be changed by this episode.

To continue the discussion of this example, the following question might be asked: As the Hallmark manager responsible for New Year’s cards, would you make any changes in your design and marketing programs in light of these events?

New Year’s cards do not involve the specific issue of underage drinking, but they do raise the issues of excessive drinking and drunk driving. Protests are less likely on New Year’s cards, however, in part because parents are not likely to be purchasing cards for their children.

**Development**

NIMBY protests by local residents in India caused Tata Motors to suspend its construction of the plant to build the Nano.

**Cases**

**The Nonmarket Environment of the Pharmaceutical Industry**

This case is designed for the application of the conceptual frameworks presented in Chapter 1. The four principal frameworks to be applied are the interrelations among the nonmarket and market environments, the four Is, the nonmarket issue life cycle, and the origins of change.

This case illustrates the perspective presented in Figure 1-1. The success of the pharmaceutical industry in its market environment, as evidenced by the rapid increase in expenditures for drugs, led to pressures in its nonmarket environment for change. Much of this was interest group based, as payers, including both those in the private and public sectors, sought to control the impact on their respective bottom lines and budgets. In the nonmarket environment the industry’s efforts to revise FDA regulations on advertising to consumers provided an opportunity for firms to promote their products through direct-to-consumer advertising. This proved to be highly successful, and the success in the market environment created a nonmarket issue of restricting DTC advertising. Other interrelationships can also be identified in the discussion.

The four I's are straightforward to identify.

**Issues**: pharmaceutical expenditures, marketing expenditures, price increases (for the elderly), collective buying power (Maine, Florida), drug discounts for the elderly, formulary inclusion, sponsorship of research and asymmetric release of information, OTC switching, drug approval and regulation (U.S. and EU), price reporting and backdoor discounts, managed care, patent protection, deceptive advertising, post-marketing surveillance, prices for AIDS drugs, parallel trade.

**Interests**: pharmaceutical companies—generic and brand name companies, consumers/patients, PhRMA, Families USA, the elderly, Public Citizen, insurers (National Institute for Health Care Management), doctors and the AMA, Prescription Access Litigation Project, pharmacy benefits managers, drug stores, pharmacists (NCPA), managed care providers, trial lawyers.

**Institutions**: state legislatures, Congress, news media, public sentiment, federal courts, NIH, FDA, HHS, Medicare and Medicaid, FTC, Bush administration, Commission of the EU and cognizant agencies, German Medicines Control Agency, South African government, Brazilian government, WTO-TRIPS, Indian patent law.

**Information**: about the causes of increased expenditures--drug price increases and prescriptions per person, regarding the effect of DTC advertising on patient health and quality of life, about research and clinical test results, about appropriate patent protection and incentives to develop new drugs, about the impact of parallel trade, and more generally about the organization of the health care industry.

Change in the nonmarket environment of the pharmaceutical industry originates from interest groups, such as those identified above, from changing market strategies (e.g., direct-to-consumer advertising), globalization, and from moral concerns. Institutional change is illustrated by the revisions in FDA regulations regarding marketing to consumers, which resulted in the boom in DTC advertising. Technological change in the pharmaceutical industry in recent years has focused on biotechnology, and there has been little opposition to the use of that technology for developing pharmaceuticals. The opponents of biotechnology focus on foods and cloning. Moral concerns originate from the AIDS tragedy and its growth in Africa and elsewhere. In the United States moral concerns, as well as interest group activity, generated pressure for discount drugs for the elderly.

The life cycle can be illustrated using a number of the issues. For example, the current DTC advertising issue began with revised FDA regulations (sought by the pharmaceutical companies). Interest group activity began as critics became concerned about the impact on spending and possible undue influence on doctors to prescribe advertised drugs. The pharmaceutical industry strongly backed DTC advertising, since it increased the number of prescriptions written. In the case the issue is currently in the legislative stage as proposals are being made to regulate DTC advertising.

Patent protection issues are now in the enforcement stage, where enforcement is primarily through the courts and also through the discretion granted to the FDA (see the Chapter 12 case *Patent Games: Plavix*). The issue of OTC switching is in the administrative stage awaiting an FDA decision. Drug discounts for the elderly is in the legislative stage with both Congress and the Bush administration developing plans.

**Teaching the case**: This case focuses on analysis rather than strategy formulation, and the most straightforward way to discuss it is to apply the frameworks with the objective of characterizing the nonmarket environment in detail. To continue to the formulation of nonmarket and integrated strategies, this case could be followed by the Chapter 8 case *Pharmaceutical Switching*.

**Additional cases on the pharmaceutical industry:**

The book includes several other cases on the pharmaceutical industry, some of which provide more information on issues in this case.

*Molecular Insight Pharmaceuticals: Integrated Strategy for Development Stage Molecular Medicine Company* (Chapter 2)

*Merck and Vioxx* (Chapter 5)

*Pharmaceutical Switching* (Chapter 8)

*Patent Games: Plavix* (Chapter 12)

*Compulsory Licensing, Thailand, and Abbott Laboratories* (Chapter 18)

*Pfizer and Celebrex* (Chapter 19)

*Pricing the Norplant System* (Chapter 20)

*Consumer Awareness or Disease Mongering?: GlaxoSmithKline and the Restless Legs Syndrome* (Chapter 21)

*Gilead Sciences (A): The Gilead Access Program for HIV Drugs* (Chapter 22)

*GlaxoSmithKline and AIDS Drug Policy* (Part V Integrative Case)

**The Nonmarket Environment of McDonald’s**

This case provides a vehicle for discussing the 4 I’s and for giving priority to the issues. It also identifies the need for a nonmarket strategy to address the issues on the company’s agenda. One thing is clear from the case and from subsequent events—McDonald’s is very concerned about its public image and hence is an inviting target for critics and activists. Also, McDonald’s has revealed that it is willing to make changes in its market strategy to lessen the criticism. Many of the issues facing McDonald’s are initiated by activists, and hence the frameworks of private politics (Chapter 4) are relevant.

The Issues are identified by the headings in the case and will not be listed here. One discussion point is the “level” at which issues should be addressed. For example, a number of broad issues are relevant for McDonald’s, but it is specific rather than broad issues that have to be addressed by the company. Three such broad issues are: the health consequences of fast food and food in general, who has responsibility for what one eats, and vegetarianism. McDonald’s may want to address the first, but the latter two are better addressed elsewhere. For example, McDonald’s basic competence is efficiency in delivering food and convenience that people want. If vegetarianism were to become widespread, McDonald’s would efficiently provide vegetarian fare. The responsibility for what one eats is a matter ultimately for the institutions of public sentiment, the courts, and Congress. McDonald’s should vigorously defend itself in the courts and support the cheeseburger act, but it should do the latter behind the scenes. The first broad issue involves a set of specific concerns, and such concerns will continue to arise as science increases our understanding of the relation between food and health. Obesity has become a public concern, and McDonald’s has taken some measures to address the issue, as considered in the Chapter 12 case *Obesity and McLawsuits.* Health is of wide concern to the public and hence to the news media and new issues will arise. For example, after the writing of this case fast food chains came under government and activist pressure to eliminate trans fats from menu items.

The interests are varied and can be categorized as in the chapter.

Organized: NCBA, trial lawyers, Morgan Spurlock, National Restaurant Association, American Meat Association, United Egg Producers, franchisees in Brazil

Unorganized: consumers, vegetarians, obese people

NGOs: Physicians Committee for Responsible Medicine, CSPI, Competitive Enterprise Institute, Environmental Defense, PETA, Compassion Over Killing, ALF, ELF

McDonald’s must address issues in a multitude of institutional arenas. The following list is not intended to be exhaustive.

Legislative: Congress, state legislatures (cheeseburger bills), Americans with Disabilities Act (ADA)

Administrative and regulatory institutions: FDA, DOA, Centers for Disease Control and Prevention, Surgeon General

Judicial: Federal courts (e.g., interpretation of ADA), state courts (obesity lawsuits)

Private regulation: Code of Conduct for Suppliers, antibiotics policy, environmental policy, treatment of food animals

International: courts in Chile and Brazil, green lights programs

Nongovernmental: public sentiment (e.g., pertaining to treatment of food animals), news media (e.g., coverage of the obesity and fast food issue)

Information: Information pertains to scientific evidence about health effects of fast food, obesity, acrylamide, etc., the extent of the public’s and customers’ concerns about the issues.

One distinction that is often difficult for students is to distinguish between interests and institutions. In the framework presented in Chapter 1 an institution is an arena or forum in which nonmarket strategies are executed. Congress is an institution, and its officeholders should be viewed as part of the institution and not as an interest. The members of Congress may have their self-interest at heart, but they also are attentive to constituents both because of a duty to represent them and because they have reelection interests. They also have institutional roles as members of committees, for example.

A useful teaching exercise is to identify for selected issues, the interests that are active or inactive and the institutional arenas in which the issue will be addressed. For example, for the issue of obesity and fast foods interests include trial lawyers and their clients, food companies, restaurants, and activist NGOs. The institutions are Congress, state governments, federal and state courts, the FDA, public sentiment, and the news media. The life cycle concept can be used to discuss where the issues are in the life cycle, how they might progress, which interests will work to advance or reverse their progress, and the extent to which institutions will determine the progress of the issues. This then naturally leads to a discussion of nonmarket strategy. As developed in Chapter 2, nonmarket strategy should not be considered in isolation from market strategy; i.e., a firm should integrate its market and nonmarket strategies. Strategies also have to be implemented, which is the subject of later chapters.

In this regard, it is interesting to note that many of the issues McDonald’s faces and the pressures it encounters are in the realm of private politics as considered in Chapter 4. Self-regulation plays an important role in private politics.

In teaching the case students may be eager to move to strategy formulation. To make the transition from the 4 I’s to strategy and action, it is important to point out that the rest of the book is about frameworks for how to formulate effective strategies.

A reality check may be needed if the class seems to be moving toward the conclusion that McDonald’s should be doing all of what the activists and NGOs demand. McDonald’s customers may not see things the same way the activists do. McDonald’s has tried on several occasions to respond to health claims by activists. In 1984 it tried “Lite Mac,” in 1991 it introduced the “McLean Burger,” and in 2000 it introduced “McSalad Shakers.” All were failures.[[4]](#footnote-4) (Offering salads is different because a demand exists for them.) Moving away from its traditional core menu items could also provide opportunities for competitors to cater to its core customers. CEO Jim Skinner stated, “We’re certainly selling more chicken, and we’re selling more fish, and we’re selling more items all across the menu. But hamburgers and French fries … have been at the core of our menu, and I think will continue to be there for the long term.”[[5]](#footnote-5)

The Chapter 12 case *Obesity and McLawsuits* considers the issue of the responsibility, if any, of McDonald’s for the obesity problem.

**Teaching the case:**

The class discussion may be organized using the following questions.

1. Identify the 4 I’s?

2. For selected issues, identify the relevant interests and institutions.

3. What is McDonald’s nonmarket issue agenda? Which issues should have the highest priority?

4. Choosing one or two issues, the focus can then be on where those issues are in their life cycles, what forces are propelling them, and how far they are likely to progress.

5. The next step is to discuss some of the specific issues and then consider strategy formulation.

**Developments and additional information:**

McDonald’s settled for $10 million two lawsuits filed by Hindus and other groups over its labeling of French fries and hash browns as vegetarian when the vegetable oil in which they were cooked contained “essence of beef” for flavoring. Most of the settlement funds went to organizations that deal with concerns raised by consumers.

During floor debate on the cheeseburger bill representatives cited a Gallup poll indicating that 89 percent of those surveyed “oppose the idea of holding fast food companies legally responsible for the diet-related health problems of fast food junkies.”

Ben Cohen of the Center for Science in the Public Interest argued, “If Congress really believed in personal responsibility, it would help them make responsible choices by passing legislation that would require fast food chains to post signs showing the calorie count for each item on their menu.”[[6]](#footnote-6)

Ken Barun, president of Ronald McDonald House charities, who had seen clips of the movie “Super-size Me,” commented, “We are talking about someone who has obviously gone to excess and exploited a brand that people will relate to in order to make his movie and capitalize on something that is unrealistic. It should be put in the category of the rest of the shock TV that you see. It’s a distortion of reality.”[[7]](#footnote-7) The movie was, however, fairly successful.

In January 2003 an epidemiological study by Loreli Mucci of the Harvard School of Public Health and Sweden’s Karolinska Institute and other researchers “found that eating foods with high levels of the chemical acrylamide appears not to increase risk for colorectal, bladder, and kidney cancers.”[[8]](#footnote-8) The acrylamide issue continued to progress, and some chains changed their cooking methods to reduce the generation of acrylamide.

To deal with the issue of the sustainability of fish supply, McDonald’s joined with the Center for Environmental Leadership in Business, a division of Conservation International, to integrate “conservation and sustainable agriculture into our global food supply chain and to work on issues related to sustainability in the fishing industry.”[[9]](#footnote-9) McDonald’s consulted with The Natural Step on the “impacts of all major business activities on the environment and the community.”

Bill Zucker of Burson-Marsteller explained, “The NCBA has been working on this issue for years to get the message out that U.S. beef is the safest in the world. The safeguards are there in the industry and from the USDA and FDA. By getting the facts out to avoid a panic, the Cattlemen were able to help people understand that and avoid misinformation and panic.”[[10]](#footnote-10) Walt Riker, a McDonald’s spokesperson said, “There is just a tremendous depth of experience and learning and best practices, so when something like this happens we don’t have to reinvent the wheel or go into what some people might think is a crisis mode.”[[11]](#footnote-11) Meat safety has continued to be an issue, but McDonald’s has not been specifically targeted.

The company also announced that it was asking suppliers to reduce the use of antibiotics. “It’s a public health concern, so we’re putting the word out that we want to buy less antibiotics in our meat.”

**The Nonmarket Environment of Google**

This is a broad case that provides for an assessment of the nonmarket environment of Google. Some of these issues are addressed elsewhere in the book. In particular, the spectrum auction is discussed in Chapter 2, and the human rights in China issue is the subject of the Chapter 16 case *Google in China*.

The following table identifies the issues and the corresponding institutions and interests as well as the location of the issues in their life cycles. The fourth I, information, is not listed because it is more difficult to summarize in a few words. For example, on the Internet privacy issue there are a number of privacy activists that push privacy issues, but the information that remains unknown is how concerned the general population of Internet users is about this issue. Information is also uncertain about what the consequences would be if privacy legislation were enacted or regulation were promulgated by the FTC.

Several issues are in the realm of private discretion and are labeled in the table as corporate social responsibility. These issues are included here because CSR is an important component of management in the market and nonmarket environments.

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| **Issues** | **Institutions** | **Interests** | **Location in Life Cycle** |
| Privacy | Congress; FTC; public sentiment | Activists, rights advocates, private politics | On hold, pre-legislative stage |
| DoubleClick | FTC, courts | Privacy activists, competitors | Administrative |
| EU privacy regulations | EU Commission, data protection offices (regulators) | Privacy advocates; citizens | Enforcement |
| Spectrum auction | FCC | Competitors | Legislative stage |
| Google books | Courts | Publishers; competitors | Interest group formation |
| Google news | Courts (Europe); FTC | Content providers | Enforcement (Europe); legislative (FTC) |
| Trademarks | Courts | Businesses (Websites) | Enforcement |
| Data protection | Courts | U.S. government; opponents of child pornography | administration |
| Google health | Public sentiment | Privacy advocates | Issue identification |
| Google telephone | Markets | Competitors | [market issue] |
| YouTube (IP) | Courts | Content providers | Administration |
| Tolls | FCC; Congress | ISPs | Interest group formation |
| Discrimination | Courts | Plaintiff | Enforcement |
| Environmental practices (market) | Public sentiment | [[market participants]] | Corporate social responsibility |
| Philanthropy | Public sentiment |  | Corporate social responsibility |
| Indigenous peoples | Public sentiment |  | Corporate social responsibility |
| China: human rights | China government; U.S. Congress; public sentiment | Human rights organizations; private politics | Administration |
| China: Online video | Regulators | Competitors | Administration |
| China: Music downloads | Regulators | Competitors | Enforcement (or lack there of) |
| Microsoft and Vista | Courts; DOJ | Microsoft | Enforcement |
| Microsoft and Yahoo | Congress; courts | Microsoft and other competitors | Interest group formation |

On some of the issues Google was a nonmarket innovator. Google, for example, was exploring the limits of intellectual property law—from both sides of the law.

The criticisms of G-mail seem to have had no impact. The following are from the Google Web site [*www.gmail.google.com*](http://www.gmail.google.com) at the time it was introduced.

**What is Gmail?**

As part of Google's mission to organize the world's information and make it universally accessible and useful, we're testing an email service called Gmail.   
  
Gmail is a free, search-based webmail service that includes more than 2,000 megabytes (two gigabytes) of storage. The backbone of Gmail is a powerful Google search engine that quickly finds any message an account owner has ever sent or received. That means there's no need to file messages in order to find them again.  
  
When Gmail displays an email, it automatically shows all the replies to that email as well, so users can view a message in the context of a conversation. There are no pop-ups or untargeted banner ads in Gmail, which places relevant text ads and links to related web pages adjacent to email messages.

**Gmail and privacy**

|  |  |
| --- | --- |
|  | **1. Is Google reading my email?**  No. Google scans the text of Gmail messages in order to filter spam and detect viruses, just as all major webmail services do. Google also uses this scanning technology to deliver targeted text ads and other related information. This is completely automated and involves no humans.  **2. Will my Gmail messages appear in Google search results?**  No, the contents of your email will never be included as Google search results.  **3. What does Google do with my personal data?**  Google uses this information to provide you a reliable service. Google does not share or reveal email content or personal information with third parties, other than in certain exceptions dictated by the law and common sense. For full details, please refer to the 'When we may disclose your personal information' section of our privacy policy. These exceptions are standard across the industry and are necessary for email providers to assist their users and to meet legal requirements.  **4. What does Google do to protect my privacy?**  Google takes several steps to guard the confidentiality of users' information by offering a number of industry-leading protections. For full details, please visit the Protecting your privacy section below.  **5. Are there ads in Gmail?**  Yes, but they are small and unobtrusive. They don't fill half your screen and we don't make you read them just to get to your inbox. Ads are never inserted into the body text of either incoming or outgoing Gmail messages and you won't see any pop-ups or untargeted banner ads in Gmail.  Gmail users only see relevant text ads, similar to those on Google search results pages. The matching of ads to content is a completely automated process performed by computers. No humans read your email to target the ads, and no email content or other personally identifiable information is ever provided to advertisers.  Ads are matched using the same technology that powers the Google AdSense program, which already places targeted ads on thousands of sites across the web by quickly analyzing the content of pages and determining which ads are most relevant to them. Here's a [sneak peek](http://gmail.google.com/gmail/help/screen2.html) of how ads look in Gmail. |

**Quotes on privacy**

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| --- | --- |
|  | **Google Mail: Virtue Lies in the In-Box - David Pogue**  New York Times - May 13, 2004  <http://www.nytimes.com/2004/05/13/technology/circuits/13stat.html> (registration required)  "If Gmail creeps you out, just don't sign up. ... That would be a shame, though, because you'd be missing a wonderful thing. Even in its current, early state, available only to a few thousand testers, Gmail appears destined to become one of the most useful Internet services since Google itself.  ... The ads are so subtle, so easily ignored, that it's hard to imagine anyone preferring the big, blinking, slow-loading graphic ads that appear every time you check for messages at the Hotmail and Yahoo Mail sites. Even more refreshing, Gmail doesn't turn you into an unpaid billboard for Yahoo or Microsoft (Hotmail's owner) by stamping ads on at the bottom of every outgoing message, no matter how sensitive the topic.  ...  The only population likely not to be delighted by Gmail are those still uncomfortable with those computer-generated ads. Those people are free to ignore or even bad-mouth Gmail, but they shouldn't try to stop Google from offering Gmail to the rest of us. We know a good thing when we see it." |

**Discussion questions:**

1. For each of the issues Google faces identify the corresponding institutions and interests. For a selected few issues identify the information and uncertainties associated with the issues.
2. Where in their life cycles are the issues?
3. What are the origins of these issues? For example, Tolls and Google Books.
4. Let’s select a couple of issues and discuss what might be the outcome. (Two issues might be Tolls and Google Books.)
5. To what extent should Eric Schmidt, Sergey Brin, and Larry Page be involved in the management of these issues? For example, Google’s operating policies in China.

**Updates**

To improve the efficiency of searches, the company used both cookies and user logs of search requests as well as other online information. This raised concerns among privacy advocates.

Information provided by Yahoo in accord with Chinese law led to the arrest of Wang Xiaoning who had posted pro-democracy literature on the Internet. Wang was sentenced to 10 years in prison. Wang, his wife, and a human rights group filed a lawsuit against Yahoo seeking damages and an injunction against Yahoo to prevent it from providing such information to the Chinese government. Yahoo eventually apologized for its actions. In November 2007 Yahoo settled for an undisclosed sum a lawsuit brought by two Chinese journalists who were jailed after Yahoo turned over to the Chinese government emails containing pro-democracy literature. Yahoo said it was complying with Chinese law.[[12]](#footnote-12) [[13]](#footnote-13)

Google had been sharply criticized for following Chinese policies regarding policing of the Internet and had take steps to avoid placing its users in jeopardy.[[14]](#footnote-14) Within a month of offering Google.cn, Google came under criticism from two government-run newspapers in China. The *Beijing News* criticized the company for not doing enough to block “harmful information.” Referring to Google’s practice of informing users when search results had been censored, the *China Business Times* wrote in an editorial, “Is it necessary for an enterprise that is operating within the borders of China to constantly tell your customers you are following domestic law?” Both publications claimed that Google was operating as an Internet content provider without a proper license.[[15]](#footnote-15)

In 2006 Google sold its stake in Baidu.

In 2008 the California Supreme Court agreed to hear the Google’s appeal of the Court of Appeals decision to allow Brian Reid’s age discrimination case to go to trial.

In 2008 Google India Private Ltd. was sued by a small business for defamation because of a posting on an anonymous blog made available by Google. The question was whether Indian law held a website responsible for postings on its service unless it could demonstrate that it had exercised due diligence. This appears to be in contrast to U.S. law as discussed in Chapter 2 and in Chapter 13.

Prosecutors in Italy filed charges against four Google executives of the Italian-language website for the posting of a video showing a disabled girl being taunted by her peers. The charges were defamation and violation of privacy. This case may involve a conflict between EU law and Italian law. According to Google EU law appeared to be similar to that in the United States, as discussed in Chapter 2, in that a website was not responsible for what others post on it.

Google pressed on with its plans to put health data on the Internet, beginning with a pilot project with the Cleveland Clinic. The project would not allow any sharing of information without prior consent.

Google lost its appeal of the Belgian court’s decision.

Google settled for $125 million two lawsuits brought by publishers over its plans to digitize and provide short excerpts on the Internet. The funds will be used to establish a registry system to allow copyright holders to obtain payments.

1. *Wall Street Journal*, November 29, 1991. [↑](#footnote-ref-1)
2. *Wall* *Street Journal*, November 29, 1991. [↑](#footnote-ref-2)
3. *San Francisco* *Chronicle*, November 28, 1991. [↑](#footnote-ref-3)
4. *Fortune*, August 9, 2004. [↑](#footnote-ref-4)
5. *Wall Street Journal*, February 23, 2005. [↑](#footnote-ref-5)
6. The Daily Buzz, [www.foodservice.com](http://www.foodservice.com), March 11, 2004. [↑](#footnote-ref-6)
7. The Daily Buzz, [www.foodservice.com](http://www.foodservice.com), February 26, 2004. [↑](#footnote-ref-7)
8. The study was published in the *British Journal of Cancer*, January 28, 2004. [↑](#footnote-ref-8)
9. McDonald’s Social Responsibility Report, May 2, 2003. [↑](#footnote-ref-9)
10. O’Dwyer’s PR Services Report, February 2004. Mad cow disease had been found in Canada 8 months earlier, and the NCBA had begun their informational campaign at that time. Barson-Marsteller’s tracking survey in January 2004 revealed that 90% of those surveyed viewed U.S. beef as safe, up from 87% prior to the discovery of BSE. [↑](#footnote-ref-10)
11. *New York Times*, January 1, 2004. [↑](#footnote-ref-11)
12. cnnmoney.com, November 13, 2007. [↑](#footnote-ref-12)
13. Google had been criticized when its social networking website Orkut gave a person’s IP address to Indian police who were investigating the person for a posting on the website. The person was convicted and jailed. (*Daily Mail*, December 1, 2007.) [↑](#footnote-ref-13)
14. See the Chapter 16 case *Google in China* for more information about the criticism and Google’s policies. [↑](#footnote-ref-14)
15. *Washington Post*, February 22, 2006. Google shared a license with a Chinese company Ganji.com. This practice was common among foreign Internet firms. [↑](#footnote-ref-15)