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From Making Money Without Doing Evil to Doing Good Without Handouts: The Google.org Experiment in Philanthropy

From the start, Google has portrayed itself as a company that dares to be different in its pursuit of innovation and information.[1] According to Google, one of these key differences, and one of the critical components in its recipe for success, is Google's embrace of a corporate philosophy that reaches beyond profits.[2] The company articulates this philosophy as a simple claim in its mission statement: "You can make money without doing evil."[3]

On the eve of its initial public offering (IPO) in 2004, the company's founders took this philosophy one step further. Explaining that they "aspire[d] to make Google an institution that makes the world a better place," Google's founders announced that they were establishing a foundation that would be funded by approximately 1 percent of Google's profits and equity.[4] They also set goals for this foundation that were loftier than those they had set for the original company: "We hope someday this institution may eclipse Google itself in terms of overall world impact by ambitiously applying innovation and significant resources to the largest of the world's problems."[5]

Soon after its highly successful IPO, Google fulfilled its promise to establish a philanthropic arm of the company, contributing nearly one billion dollars to a new entity called Google.org.[6] Over the last several years, Google.org has slowly begun

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1. *See* Google Inc., Registration Statement (Form S-1), at 27 (Aug. 18, 2004) ("Google is not a conventional company. We do not intend to become one. Throughout Google's evolution as a privately held company, we have managed Google differently. We have also emphasized an atmosphere of creativity and challenge, which has helped us provide unbiased, accurate and free access to information for those who rely on us around the world.").
2. *See id.* at 27, 32 (noting that Google intends to maintain its ability "to innovate and retain its most distinctive characteristics" and highlighting Google's commitment to "making the world a better place").
3. *See* Google, Corporate Information: Our Philosophy, http://www.google.com/intl/en/corporate/ten things.html (last visited Nov. 1, 2007).
4. *See* Registration Statement, *supra* note 1, at 32.
5. *Id.*
6. *See* Katie Hafner, *Philanthropy Google's Way: Not the Usual*, N.Y. Times, Sept. 14, 2006, at A1; *see also* Google.org, About Us, http://www.google.org/about.html (last visited Nov. 1, 2007) [hereinafter Google.org, About Us] (noting that "Google.org is the philanthropic arm of Google and is the umbrella which includes the

to take shape, but in a novel form.[7] Instead of merely establishing a traditional nonprofit foundation, Google's founders cast Google.org as a "for-profit philanthropy," a hybrid entity with charitable aims but for-profit status.[8]

In foregoing non-profit status for Google's philanthropy, Google.org's founders sought to escape the restrictions that traditionally circumscribe the activities of non-profit organizations, thereby increasing Google.org's flexibility and its permissible scope of activity.[9] In essence, by giving up the government tax credits Google.org could have received if it were structured as a non-profit entity, Google.org is free to invest in for-profit or non-profit ventures, or charitable or commercial ventures, as it chooses.[10] Moreover, it may also make and reinvest profits, not just make grants or donations.[11] Its founders hoped that by allowing it to pursue ventures that could return a profit, Google.org could obtain "some leverage by doing things out of [the non-profit] structure that other people aren't doing," as well as a level of sustainability.[12] While one of its founders argued that "it's good for people to make money doing philanthropy,"[13] Google.org's leaders also took care to note that profit was not the only, or even overriding goal, pointing out that Google.org's "emphasis is on social returns, not economic returns."[14] Utilizing this hybrid framework, Google.org has begun developing programs to address growing problems in the areas of climate change, public health, economic development, and poverty.[15]

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work of the Google Foundation, some of Google's own projects, as well as partnerships and contributions to for-profit and non-profit entities").

7. Google.org, About Us, *supra* note 6.

8. *See* Natalie Ghidotti, *The New Wave of Philanthropy*, NonProfit Times, Jan. 15, 2007, at 1 (citing the Google founders' intentions to utilize a for-profit status for Google.org); Hafner, *supra* note 6; *see also* Robin Rogers-Dillon, *Nonprofit Stock Markets and Social Citizenship*, Society, Mar./Apr. 2007, at 35 (citing Google.org as a for-profit model of philanthropy). It is important to note that a portion of Google.org, the Google Foundation, will operate as a section 501(c)(3) non-profit philanthropic organization starting with an endowment of ninety million dollars. Google.org, About Us, *supra* note 6.

9. *See* Hafner, *supra* note 6 (explaining that Google's founders "believe for-profit status will greatly increase their philanthropy's range and flexibility" and also citing Google.org's Executive Director, Dr. Larry Brilliant, who notes that unlike corporate foundations with a traditional non-profit structure, "'Google.org can play on the entire keyboard'" and "'can start companies, build industries, pay consultants, lobby, give money to individuals and make a profit'").

10. *See* Rogers-Dillon, *supra* note 8, at 36.

11. *See* Richard Branson, *The New World of Philanthropy*, Daily Nation, Dec. 30, 2006, http://www.businessfightsaids.org/site/apps/nl/content2.asp?c=GWKXJfNVJtF&b=13211353&ct=3351775 (noting that "[a] new breed of social-sector leaders is redefining charity through social entrepreneurial solutions that end the ongoing dependency on charitable dollars").

12. Ghidotti, *supra* note 8, at 1.

13. *Id.*

14. *See* Hafner, *supra* note 6.

15. *See* Rogers-Dillon, *supra* note 8, at 36 (noting that Google.org does not fit established categories in philanthropy, but "blurs traditional divisions between for-profit corporations and charitable organizations" and "also blurs the line between the standard corporate work of maximizing profits and the work of philanthropic foundations"). *But see* Hafner, *supra* note 6 (citing skeptics' views on Google.org); David Haskell, *For-Profit Philanthropy*, N.Y. Times, Dec. 10, 2006, § 6 (Magazine), at 50 (citing views of proponents of for-profit philanthropy).

However, Google's decision to blur the lines between for-profit business entities and charitable organizations in forming Google.org has stirred controversy[16] and raised important questions about the benefits and uniqueness of its hybrid philanthropy model. Some commentators have enthusiastically embraced Google.org as a model or harbinger of a new form of innovative, entrepreneurial philanthropy.[17] Critics charge that Google.org's hybrid model is nothing new, but merely a socially responsible business masquerading as a philanthropy.[18] Still others argue that profit-maximization is an inappropriate tool to wield against poverty and other social problems.[19]

Against this backdrop, this Essay will take a deeper look at Google.org, first analyzing the innovations that the Google.org model seeks to add to traditional philanthropic and business models,[20] and then focusing on key aspects of the traditional for-profit and non-profit structures that Google.org lacks.[21] This Essay will argue that these critical distinctions provide Google.org with unprecedented freedom and flexibility to pursue its goals, but also raise significant regulatory and accountability challenges.[22] In this light, Google.org may be viewed as truly an experiment in philanthropy, but one that also must develop innovative accountability structures to match its ambitious goals.

I. WHAT IS NEW AND INNOVATIVE ABOUT GOOGLE.ORG?

Google.org has been heralded as an example of a new and potentially transformative philanthropic movement,[23] one that has the potential to transcend the pitfalls

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16. *See* John Tierney, *Capitalism with a Heart*, N.Y. Times, Sept. 16, 2006, at A15 ("Google's young founders are already taking on poverty, disease and global warming, and they're not just dispensing cash. They've set up their philanthropy as a for-profit organization. To many liberals, this sounds dangerously oxymoronic. How can philanthropy be profitable? A robber baron is supposed to cleanse his hands by donating his lucre to a foundation run by enlightened beings untainted by commerce . . . . This new Google venture also makes conservatives suspicious. It sounds like the 'corporate social responsibility' mantra used by executives trying to be hip—and impress young trophy wives' friends—by financing politically correct boondoggles with shareholders' money.").

17. *See, e.g.*, Haskell, *supra* note 15, at 50.

18. *See* Stephanie Strom, *What's Wrong with Profit?*, N.Y. Times, Nov. 13, 2006, at F1 (citing the views of non-profit expert Professor Mark Rosenman: "'I come at this from at least a wonderment of what are the advantages the melded or hybrid model brings. . . . [t]hough I have no problem with philanthropy and socially responsible business being joined, I do have one with a for-profit enterprise being called philanthropy'").

19. Connie Bruck, *Millions for Millions*, New Yorker, Oct. 30, 2006, at 62.

20. *See infra* notes 23–44 and accompanying text.

21. *See infra* notes 45–46 and accompanying text.

22. *See infra* Part II.

23. *See, e.g.*, Susan Raymond, *Google's Philanthropy*, onPhilanthropy, Sept. 20, 2006, http://www.onphilanthropy.com/site/News2?page=newsArticle&id=6731&security=1&news_iv_ctrl=1162 (stating that "[t]he emergence of Google.org as a for-profit philanthropy, and its comparable organizations such as Whole Foods, may be bringing us to The End of Definitions in the philanthropic and nonprofit worlds"); *see also* Haskell, *supra* note 15 ("This year, the philanthropic community witnessed the opening moves of Google.org, a for-profit entity through which Google plans to conduct its charitable operations. As a profit-making enterprise, Google.org can do certain things that by law a nonprofit cannot. It can decide for itself what counts as a worthy cause, rather than hewing to the Internal Revenue Service's definition of a tax-exempt charity. And if

of the past by deliberately blurring the lines between business and philanthropy.[24] At the same time, however, critics charge that Google.org represents nothing new, but is simply a business dressed up with buzzwords[25] or is just the most recent incarnation of a longstanding entrepreneurial streak in the realm of philanthropy.[26] This Part analyzes some of the characteristics and terms that have been employed to distinguish Google.org from traditional non-profit philanthropies or businesses,[27] and attempts to isolate the innovations that set Google.org apart from its predecessors or counterparts in the non-profit and business realms.[28]

At the outset, the commentators attempting to capture the characteristics that distinguish Google.org from traditional charitable endeavors have tagged it with many names—calling it "entrepreneurial philanthropy," "venture philanthropy," "innovative philanthropy," or "hybrid philanthropy."[29] It has also been called a "for-profit charity,"[30] and an example of "compassionate capitalism,"[31] "philanthrepreneurship,"[32] and "social entrepreneurship."[33]

These names are often accompanied by definitions that focus on Google.org's for-profit status or its ability to incorporate business principles in the pursuit of philanthropic aims—or sometimes both—as Google.org's primary structural "innovation." At the most basic level, proponents of the term "for-profit charity" describe Google.org as an entity that "invests in good causes but sometimes asks the recipients to return the capital for use in other causes."[34] Other definitions go fur-

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Google.org succeeds at financing, say, the invention of the next generation of hybrid cars, it can make money even as it makes the planet a better place. Welcome to the world of brand-enhancing, profit-making, tax-paying philanthropy."); Strom, *supra* note 18 ("[This] year, as never before, the line between philanthropy and business is blurring. A new generation of philanthropists has stepped forward . . . . They are 'philanthropreneurs,' driven to do good and have their profit, too," citing Google.org as an example).

24. *See The Business of Giving*, Economist, Feb. 25, 2006, at 71 ("Many of the new philanthropists are well aware that traditional philanthropy is not sufficiently businesslike. They want to bring about a productivity revolution in the industry by applying the best elements of the for-profit business world they know.").

25. Strom, *supra* note 18 (citing the view that there is no need to develop corporate structures that are more closely aligned with philanthropic purposes because such entities already exist in the form of socially responsible businesses).

26. *See* Ghidotti, *supra* note 8 (citing the views of William Gates, Sr., co-chairman of the Bill and Melinda Gates Foundation: "'There have been entrepreneur philanthropists for decades . . . . To say this is the modern thing that all these young people in philanthropy are entrepreneurs as distinguished from [something else]. I think it's nonsense.'"); *see also* J. Gregory Dees, The Meaning of "Social Entrepreneurship" 1 (May 30, 2001) (unpublished manuscript, *available at* http://www.fuqua.duke.edu/centers/case/documents/dees_sedef.pdf) (noting that "[t]he idea of 'social entrepreneurship' has struck a responsive chord," and has been associated with the high-tech pioneers of Silicon Valley, but while the "language of social entrepreneurship may be new," the phenomenon is not, as "[w]e have always had social entrepreneurs, even if we did not call them that").

27. *See infra* notes 27–39 and accompanying text.

28. *See infra* notes 40–46 and accompanying text.

29. Ghidotti, *supra* note 8.

30. Victoria Murphy Barret, *Doing Well, Doing Good*, Forbes, Apr. 23, 2007, at 56.

31. Tierney, *supra* note 16.

32. Branson, *supra* note 11.

33. J. Gregory Dees, *Taking Social Entrepreneurship Seriously*, Society, Mar./Apr. 2007, at 24, 28.

34. Barret, *supra* note 30.

ther and incorporate the language of business strategy to describe Google.org's innovations. For example, Google.org has been described as a "for-profit philanthropy," that is, a "brand-enhancing, profit-making, tax-paying philanthropy" which, if successful, "can make money even as it makes the planet a better place."[35] Similarly, advocates of the term "philanthrepreneurship" view Google.org as a model for twenty-first century philanthropy built by entrepreneurs who can apply "creative business principles to daunting social issues."[36]

Other definitions focus on Google.org's hybrid and boundary-blurring form, citing it as an example of an unprecedented shift between sectors of society.[37] Perhaps the most expansive definition portrays Google.org as an example of "social entrepreneurship," an entity for which "profit is not a motive, it is a means to an end," and which engages in a process of "innovation, experimentation, and adaptation" as it searches for solutions.[38]

While each of these terms and definitions highlight important characteristics of the Google.org model, they do not fully capture the innovations that Google.org brings to the current philanthropic debate.

It is not entrepreneurship in the pursuit of philanthropy alone that sets entities like Google.org apart from their predecessors, even if this entrepreneurialism is couched in the latest business buzzwords. The Carnegie and Rockefeller Foundations, for example, may be viewed as entrepreneurial and transformative philanthropies in the context of their times.[39] Nor is it the adoption of for-profit status for an entity aiming to impact the public interest that necessarily distinguishes Google.org. For-profit businesses oriented towards public interest or socially responsible activities already exist; the Body Shop is one often-cited example of such

35. Haskell, *supra* note 15.

36. Branson, *supra* note 11.

37. Raymond, *supra* note 23 (analyzing Google.org and stating "[w]e are beginning to understand that old categories of 'commerce' 'capitalism' 'philanthropy' do not serve the new generation of either social problems or market opportunities").

38. J. Gregory Dees, Philanthropy and Enterprise: Harnessing the Power of Business and Entrepreneurship for Social Change 5, 7 (Aug. 2, 2006) (paper presented to the Aspen Institute, *available at* http://www3.brookings.edu/global/aspen/2007dees.pdf); *see also* Dees, *supra* note 33, at 26 ("Social and business entrepreneurs uncover or create new opportunities through a process of exploration, innovation, experimentation, and resource mobilization.").

39. *See The Birth of Philanthrocapitalism*, Economist, Feb. 25, 2006, at 9 ("America's early charitable foundations were built by entrepreneurs. Carnegie and Rockefeller would have understood the new investment-oriented model. 'Having seen their own economic activity transform the world, they thought that the foundations they left behind would be transformative organizations' . . . . Those foundations did remarkable things. Set up as conduits for making grants as well as running the programmes that would benefit from the money, they thought big, concentrated on clear goals and were willing to invest heavily for long periods to achieve them . . . ."); *see also* Rogers-Dillon, *supra* note 8, at 35 ("The Carnegies, the Mellons, and the Rockefellers shaped philanthropy in the United States with the form and content of their giving.").

a for-profit business.[40] Moreover, many non-profit organizations engage in limited for-profit activities, such as selling merchandise, to support their endeavors.[41]

Rather, what sets Google.org apart is the type of innovation that drives its entrepreneurialism. Like many other philanthropic organizations, it seeks to leverage its resources to maximize impact.[42] However, Google.org does so by harnessing both information technology and market mechanisms to serve its philanthropic aims. In its own words, "Google.org aspires to use the power of information to help people better their lives. We are an experiment in active philanthropy."[43] In combining the power of information with market mechanisms, Google.org

> *reflects the culture of the business that brought [its founders] their wealth: information technology, with its ethos that everyone should have access to information. By their way of thinking, the marketplace can have the same level-the-playing field impact, and supply the world's poor with basic needs like food, sanitation and shelter.*[44]

That is, in many ways Google.org aims to replicate the success of its corporate parent, but this time it intends to harness the benefits and profits of this model exclusively for the public good. It is this "experiment in active philanthropy" that distinguishes Google.org both from previous forms of philanthropy,[45] and from for-profit businesses oriented towards socially-responsible activities (such as Google.com).[46]

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40. *See* Strom, *supra* note 18 (discussing the Body Shop as an example of an existing for-profit business with a philanthropic purpose).

41. *See* Anup Malani & Eric A. Posner, *The Case for For-Profit Charities* 2 (Univ. of Chicago Sch. of Law, John M. Olin Law & Economics Working Paper No. 304, 2006), *available at* http://ssrn.com/abstract_id=928976; *see also* Strom, *supra* note 18 (citing Stephen Case's description of the National Geographic Society as a non-profit that sustains itself through the sales of merchandise and other items).

42. *See The Business of Giving*, *supra* note 24, at 71 ("Leverage is particularly important to the new philanthropists. They know that however large their personal fortunes, they are dwarfed by the financial resources at the disposal of governments and in the for-profit marketplace."); *see also* Ghidotti, *supra* note 8 (quoting Google.org founder Larry Page: "'[t]here's a huge amount of money that exists in the 501(c)(3) structure, but we figure we can get some leverage by doing things out of that structure that other people aren't doing'"); Strom, *supra* note 18 (quoting eBay's former president, Jeffrey Skoll: "'I think these days, people want to join with other people to make change. It's about leverage'").

43. Google.org Home Page, http://www.google.org (last visited Nov. 1, 2007).

44. *See* Strom, *supra* note 18.

45. *See* Rogers-Dillon, *supra* note 8, at 35–36 ("What is new in our time is . . . the changes in accessing information and the loosening of national boundaries in commerce. The Carnegies, the Mellons, and the Rockefellers shaped philanthropy in the United States with the form and content of their giving. The most powerful and wealthy capitalists are now investing in a different kind of philanthropy, global in focus. The most important example comes from the Internet giant Google. Using a for-profit model of philanthropy, Google has produced Google.org. Sooner or later this model is likely to shape the nature of charity in the United States as well."); *see also* Strom, *supra* note 18 ("It sounds simple, but the idea of such hybrid philanthropy is upsetting long-held conventions.").

46. *See* Google, Corporate Information: Company Overview, http://www.google.com/intl/en/corporate/index.html (last visited Nov. 1, 2007) ("Google's mission is to organize the world's information and make it

Viewed in this light, the reasons for Google.org's hybrid structure become clearer. Google.org's for-profit status allows it to utilize market mechanisms as a conduit for spreading its resources where they are needed, whether these resources are information or other goods or services. As a for-profit entity, Google.org is freed from the legal restrictions on commercial activity that apply to non-profit entities[47] and thus may distribute its resources through a wider range of market-oriented activities.

At the same time, as a philanthropic endeavor that has already been funded, Google.org is freed from many of the market pressures that generally restrain for-profit businesses. Unlike most for-profit businesses, it is free to focus on social returns over economic returns. As one of Google.org's founders explained, "[f]or us, a lot of these things are investments just like normal business deals, but we don't really expect to make a lot of money right away. They aren't nonprofits, but they're less-profits. Maybe they'll take 10 years to pay off."[48]

However, as will be discussed below, while Google.org's structure may free it from the restrictions that confine non-profit and for-profit entities, it also may free it from many of the structures that are used to hold non-profit and for-profit entities accountable to their goals and stakeholders.

II. GOOGLE.ORG'S FREEDOM AND ACCOUNTABILITY

On one hand, Google.org's hybrid structure gives it immense freedom for experimentation and innovation. Again, with for-profit status, Google.org can engage in a larger range of activities than a non-profit, which is legally confined to certain types of educational, charitable, or other qualifying activities,[49] and which loses its tax benefits if it engages in commercial activities.[50] Thus, as a for-profit entity, "Google.org can play on the entire keyboard . . . . It can start companies, build industries, pay consultants, lobby, give money to individuals and make a profit"[51] in pursuit of its philanthropic goals.

On the other hand, however, as a for-profit philanthropy, Google.org also evades many of the traditional structures that regulate and keep in check the activities of both non-profit and for-profit entities. For instance, non-profit organizations are subject to state and federal laws that restrict the levels of compensation that their employees may receive, and the nature of non-profits' activities are monitored by state attorneys general and the IRS.[52] As a for-profit entity, even one with philan-

universally accessible and useful."); *see also* Tierney, *supra* note 16 (advancing the view that Google.com's founders "may not have set out to help humanity with their search engine, but they have enriched countless lives by spreading ideas and connecting people").

47. *See, e.g.*, Malani & Posner, *supra* note 41, at 2, 4.
48. *See* Ghidotti, *supra* note 8.
49. *See, e.g.*, Malani & Posner, *supra* note 41, at 4.
50. *Id.* at 2.
51. Hafner, *supra* note 6.
52. *See* Malani & Posner, *supra* note 41, at 12.

thropic goals, Google.org need not comply with those restrictions, which means that it lacks such forms of oversight and regulation to ensure that it adheres to its philanthropic purpose.

At the same time, because of its philanthropic focus, Google.org also escapes market-based accountability structures. For-profit businesses are generally subject to "market discipline" in the sense that if they fail to create value or fail to "shift resources to more economically productive uses, they tend to be driven out of business."[53] By casting itself as a philanthropy that values social returns over market returns (and one that starts with an enormous pot of seed money),[54] Google.org has shrugged off much, if not all, of the discipline provided by markets and profits. While Google.org aims to generate profits, its executive director also acknowledges that if its endeavors failed to generate profits, "we wouldn't care . . . . We're not doing it for the profit. And if we didn't get our capital back, so what? The emphasis is on social returns, not economic returns."[55]

The problem, however, with social returns is that, in contrast to economic returns, there is no clear or generally accepted method of valuing social returns.[56] While social entrepreneurs may operate in markets, in many situations these markets fail to provide adequate discipline because it is difficult for markets to value social improvements or benefits.[57] In effect, "[t]here is no market discipline to force philanthropists to adopt innovations, however desirable."[58] Furthermore, while many social entrepreneurs are attempting to create market-based social valuation mechanisms, they face a difficult task—"in the end, those who are trying to produce a philanthropic version of the capital markets must answer a billion-dollar question: how do you measure success? The original sort has an incontrovertible answer: profits. But a philanthropic equivalent will be nothing like as straightforward."[59] Thus, among the critical challenges Google.org must face and answer are how it will measure its success and social returns, as well as how it will continue to ensure that it meets its philanthropic purposes.

Pressure from stakeholders may be able to fill some, though not all, of these gaps.[60] As a for-profit arm of Google, Inc., Google.org presumably will be subject to the oversight of investors. However, the investors actually may not do a great deal to hold Google.org accountable to its goals. For one thing, Google's founders

53. *See* Dees, *supra* note 26, at 3.

54. *See* Google.org Home Page, *supra* note 43.

55. Hafner, *supra* note 6.

56. *See Wealth and Philanthropy: Virtue's Intermediaries*, Economist, Feb. 25, 2006, at 75 (noting that as yet, and despite many attempts to create such markets, "'social sectors do not have rational capital markets to channel resources to those who deliver the best results'").

57. *See* Dees, *supra* note 26, at 3.

58. *See The Business of Giving*, *supra* note 24, at 71.

59. *See Wealth and Philanthropy*, *supra* note 56, at 75.

60. *See, e.g.*, Alex Nicholls, 'Measuring Impact in Social Entrepreneurship: New Accountabilities to Stakeholders and Investors?' 5–7 (2005) (unpublished manuscript, *available at* http://www.built-environment.uwe.ac.uk/research/ESRCseminars/pdfs/alex_nicholls_seminar4.pdf).

informed potential investors of their plans to devote a certain amount of funds to a philanthropic entity before taking the company public, so the investors have little basis to complain now that the founders are "robbing" them by doing so.[61] For another, shareholders might be constrained by the fact that "Google.org tax forms will not be made public, but kept private as part of the tax filings of the parent, Google Inc."[62] Moreover, even if shareholders step in to address financial concerns (of either the parent company or its philanthropic arm),[63] as some believe they might in an economic downturn,[64] such an action may conflict with Google.org's emphasis on social, not necessarily financial, returns. In addition, while the public also may have a role to play in monitoring Google.org's activities,[65] this role is dependent on Google.org's willingness to operate with a sufficient level of transparency.[66]

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Thus, while Google.org's hybrid structure may provide it with great freedom to experiment by virtually "eliminat[ing] all the constraints that might otherwise apply[,]"[67] it may also remove it from the reach of many of the tools that provide accountability for both non-profit and for-profit entities.[68] In some ways, Google.org's activities may be bound only by the good intentions and goodwill of its founders and directors.[69] Hopefully, Google.org's innovations will include measures to provide transparency and accountability to its investors, contributors, customers, and recipients as it works towards its philanthropic goals. As the Google.org experiment in philanthropy plays out, it will be important to examine whether Google.org's goodwill and innovations will be enough to meet the chal-

61. *See generally* Tierney, *supra* note 16 (quoting John Mackey, co-founder of Whole Foods, who said that socially responsible corporations should inform shareholders of the corporation's commitment to philanthropy prior to going public so as to avoid a possible negative backlash from the shareholders).

62. *See* Hafner, *supra* note 6.

63. *See, e.g.*, Dodge v. Ford Motor Co., 170 N.W. 668, 683–85 (Mich. 1919) (holding that corporations may, in their discretion and in good faith, donate corporate profits to charity so long as the donation has some link to profit making purposes); *see also* Churella v. Pioneer State Mut. Ins. Co., 671 N.W.2d 125, 132 (Mich. Ct. App. 2003) (holding that plaintiffs must explain how a failure of directors to consider a distribution of dividends constitutes fraud or bad faith dealings in order to show an abuse of business discretion).

64. *See* Hafner, *supra* note 6 (quoting a tax lawyer who stated: "'[t]he money is at the beck and call of the board of directors and shareholders . . . . [i]t's possible the shareholders of Google might someday object, especially if we go into an economic depression and that money is needed to shore up the company'").

65. *See* DAVID VOGEL, THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY 9 (2005) (discussing civil society efforts at regulation which attempt to fill the governance gap between law and the market).

66. *See* United States v. Bennett, 161 F.3d 171, 190 (3d Cir. 1998) (upholding the district court's finding that the defendant, under the veil of a charitable organization, fraudulently convinced donors to contribute to his for-profit business); *see also* VOGEL, *supra* note 65 (noting that civil regulation constitutes a form of "soft" or legally-uneforceable regulation).

67. *See* Hafner, *supra* note 6.

68. *See supra* Part II.

69. *See supra* Part I.

lenges discussed above, what roles existing social, regulatory or market-based structures can play in this experiment, and whether entirely new oversight and accountability mechanisms must be developed to meet these challenges.