



Response of Eric Schmidt, Executive Chairman, Google Inc.
Before the Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy, and Consumer Rights

Hearing on “The Power of Google: Serving Consumers or Threatening Competition?”
September 21, 2011

Questions For the Record for Eric Schmidt from Sen. Blumenthal

Questions about Google’s Market Power:

1. For 100 years, federal antitrust law and competition law have existed to protect consumers from the potential negative effects of highly concentrated market power. The bigger a company gets, the more danger there is that the company will abuse its monopoly position to stifle innovation and raise prices.

Justice Scalia noted this fundamental principle in his opinion in *Eastman Kodak Co. v. Image Technical Services*, where he said:

“Where a defendant maintains substantial market power, his activities are examined through a special lens: Behavior that might otherwise not be of concern to the antitrust laws – or that might even be viewed as precompetitive – can take on exclusionary connotations when practiced by a monopolist.”

Google is clearly the dominant provider of web search services worldwide. In the United States, 65% or more of all general Internet searches take place on Google. In Europe, Google has 94% of this market. The explosion of smartphones has provided a new search market – and in that space, Google processes a whopping 97% of all searches.

Ten years ago, there were many competing search engines – AltaVista, Lycos, Ask.com, AOL Search, just to name a few. Now, there are really only two – Google, and Microsoft, which provides the underlying software for both the Bing and Yahoo search engines. Microsoft does not appear to have a sustainable alternative – they hold 30% of the market, but are losing over \$2 billion a year on search services, while Google is made \$29 billion in 2010.

Q: Mr. Schmidt, your company is overwhelmingly dominant – it really has only one rival, and that rival is losing incredible sums of money each year. Given the tremendous market power of your company, do you believe it’s fair to characterize Google as a monopoly?

First, I would disagree that Google is dominant. By investing smartly, hiring extremely talented engineers, and working very, very hard (and with some good luck), Google has been blessed with a great deal of success. But given the rapid pace of change in the technology industry, we take nothing for granted.

As I acknowledged during the Committee hearing, Google is “in the area” of 65% of queries in the U.S., if you look only at Google’s general search competitors, such as Microsoft’s Bing and Yahoo!. In fact, we find

that the monthly general search query figures released by comScore and Hitwise don't reflect the reality of how many sites Google competes with in search. Google has many competitors that are not general search engines, including specialized search engines, social networks, and mobile apps. So inferring that Google is in any way "dominant" in search would be incorrect.

At the hearing, I noted that the question of whether such a market share, if accurate, would constitute a monopoly, is a legal determination; Ms. Creighton is more qualified to speak to those points. At a minimum, though, I am confident that Google competes vigorously with a broad range of companies that go well beyond just Microsoft's Bing and Yahoo!, and that Google has none of the characteristics that I associate with market power. The technology industry is one of the most competitive and dynamic spaces in the entire economy, with small companies as well as larger companies competing hard against each other in lots of areas. Google has many strong competitors. We compete against a broad array of companies, including, for example, general search engines (e.g., Microsoft's Bing, Yahoo!), specialized search engines (e.g., Kayak, Amazon, WebMD, eBay), social networks (e.g., Facebook, Twitter), mobile apps, and voice-activated search tools like Apple's Siri. The Internet is incredibly competitive, and new forms of accessing information are being utilized every day.

Unlike technologies of the past, on the Internet, competition is one click away. In addition, the history of the technology industry shows that technologies usually get supplanted by completely new models. Therefore, the question is not necessarily, "Who is going to beat Google in search?" but also, "What new model might take the place of search?"

2. **Google frequently argues that it is not a monopoly because it provides its service for free and competition is "one-click away." This argument sounds appealing. Consumers are not forced to use Google, and anyone can start a website. The problem is that Google, like all search engines, serves consumers and advertisers. Consumers are really just a means to an end – Google generates nearly all of its revenue from advertisers, through advertisements on its own website and through ads it places across the internet.**

This is not a "new" model. It's similar to broadcast TV. TV shows cost millions to produce, but consumers get them for free – because they're funded by advertisers. Millions of people watch ABC, so ABC can charge advertisers high costs, are re-invested into new million-dollar TV shows. But the difficulty in building ad revenue is a significant barrier to entry into this market. You can only fund new shows if you have advertisers. You can only get advertisers if you have viewers. And you can only get viewers if you have new shows. It's great if you already have all of the viewers – but good luck starting from scratch. These markets tend to move toward concentration and monopoly – there are only a few national broadcast networks.

Google has all the "viewers" on the internet. Since most consumers use Google's search engine, most advertisers need to advertise through the company. – Google controls 80% of the online search advertising market. Ad revenue means better products, which means more users. This "network effect" makes it hard to push Google from its dominant position.

Jonathan Rosenberg, Google's own VP of Product Management and Marketing, actually gave the best explanation of this in 2008. He said:

"Google is really based on this. Users go where the information is so people bring more information to us. Advertisers go where the users are, so we get more advertisers. We get more users because we have more advertisers because we can buy distribution on sites that understand that our search engine monetizes better. So more users more information,

more information more users, more advertisers more users, it's a beautiful thing, lather, rinse, repeat, that's what I do for a living. So that's ... the engine that can't be stopped."

Q: Mr. Schmidt, please indicate on an company by company basis how much revenue was shared with each of your top 100 internet advertisers in the prior fiscal year, at whatever level of specificity is appropriate. If you were running most internet businesses, do you think it would be practical to refuse to advertise with Google?

Google does not share revenue with advertisers. They pay Google, through our AdSense program, to advertise on website publishers websites.

Google does share revenue with our publishing partners through Google AdSense. Publishers, such as the New York Times, that use AdSense receive a revenue share when a user clicks on a Google-hosted ad on their site.

Google's specific revenue share agreements with our publishing partners are confidential, proprietary information that is never shared publicly. I can, however, offer the information requested through more general numbers. Google's AdSense has two main types of publisher contracts: AdSense for Content and AdSense for Search. AdSense for Content publishers, who make up the vast majority of our AdSense publishers, typically earn a 68% revenue share. AdSense for Search partners typically earn 51% revenue share.¹ The precise revenue sharing arrangement can be subject to a negotiated agreement, however.

Advertisers use the combination of advertising channels that gives them the best return on their investment. While some advertisers may only use Google, our experience shows that almost all advertisers use multiple means of advertising to reach the greatest number of customers. Additionally, there are many businesses that choose not to advertise with Google at all and instead spend their ad dollars on TV, radio, newspapers, magazines, and online banner ads. That is why we need to offer the best services for our advertisers, because if we do not, competition is just a click or a phone call away.

- 3. In your testimony before the committee, you suggested that Google's market share is not a significant barrier to entry because competition is "one-click away." This seems inconsistent you're your statement in 2003, when you told the New York Times that "[m]anaging search at our scale is a very serious barrier to entry."**

Q: Mr. Schmidt, please explain why "[m]anaging search at our scale is a very serious barrier to entry" and how this can be reconciled with your claim that competition is "one-click away."

I made that statement to the New York Times over eight years ago, and I was probably talking about search in a more narrow way than I view competition today. That same New York Times article emphasizes that Google's advantage in 2003 was that we had amassed a large number of data centers to handle a sizable volume of queries.² But today, data centers have been reduced to a commodity that any company can buy or rent. Moreover, both Microsoft's Bing and Yahoo! today handle *millions more queries* than Google did in 2003. In two short years, Microsoft's Bing has already reached the size that Google was in 2007.

¹ Neal Mohan, "The AdSense Revenue Share", Inside AdSense Blog, May 24, 2010, <http://adsense.blogspot.com/2010/05/adsense-revenue-share.html>.

² John Markoff and G. Pascal Zachary, "In Searching the Web, Google Finds Riches", New York Times, April 13, 2003, <http://www.nytimes.com/2003/04/13/business/in-searching-the-web-google-finds-riches.html?pagewanted=all&src=pm>.

Scale certainly plays a role in Google's success, but it is not the key to our success. Google is not successful because of the number of queries we process. Competition on the Internet is just one click away and that disciplines Google into concentrating on making our users happy. To this end, Google makes tremendous investments in research and development and in hiring the best engineers, who are extremely talented, have a huge depth of experience, and are focused like a laser on thinking of ways to deliver better services to our users. We believe we are better not because we are bigger but because our technology is better.

Google does not believe that scale is a barrier to entry. The Internet provides a level playing field for competition; Google's size has not changed that fact. Indeed, recent entry into the general search business by start-ups such as Blekko, venture capital investments in search startups like DuckDuckGo, and Microsoft's Bing's success after only two years demonstrate that entry is not only possible but real.

A lack of scale did not deter companies like Facebook, Twitter, and LinkedIn from starting, finding an audience, and achieving widespread prominence, recognition, and ultimately success. At the same time, the large size of many Internet companies like MySpace did not prevent them from losing their audience and ultimately faltering. Given the nature of the Internet, websites and services can and do get supplanted by completely new models. So the relevant question may not be, "Who will beat Google in search?" but rather, "What new model might take the place of search?"

4. **When Google argues that it is not anticompetitive, the company sometimes points to its efforts to allow consumers to easily move away from Google Products. Google actually runs an organization called the "Data Liberation Front" to help you "move your data in and out of Google Products." The group's mission statement is this:**

"Users should be able to control the data they store in any of Google's products. Our team's goal is to make it easier to move data in and out."

Of course, it's the advertisers who are actually generating profits for Google. Google's products are free so that they can gain additional consumers, making their platform more attractive to advertisers. It's what economists call a classic example of a "two-sided market" – a business that provides value to two separate but related groups of customers. Consumers could choose not to use Google. But advertisers certainly can't.

Economists have noted allowing advertisers to move easily and cheaply between platforms helps to deter the market concentration and monopoly effects that are a natural result of markets that generate increasing value from large networks.

If a small company has to invest the resources to compete in an effective internet advertising auction, it's going to invest in Google's ads, not Microsoft's. If the company could easily export its data to Microsoft, it could advertise in both places with no additional cost. But if it has to choose one, it's going to choose the dominant player.

In your testimony before the committee, you indicated that advertisers have the same freedom to move data in and out of Google's advertising platform as users. Some companies, however, have complained that it is not easy to move advertising data they have compiled for Google's ad auctions to competing advertising platforms, like Microsoft's Bing or Yahoo.

Q: Mr. Schmidt, please explain precisely what advertising data can and cannot be exported from Google's ad services and imported into online advertising auctions on competing platforms.

A number of resources exist to make it as easy as possible for AdWords users to export their data out of AdWords and use it for any purpose, including uploading it to another platform. In fact, Google is a leading proponent of data portability, and our Data Liberation Front provides step-by-step instructions to guide advertisers.³ Competitors such as Microsoft also provide advertisers with simple instructions to import their Google ad data into their advertising platforms.⁴

Google provides a free tool, AdWords Editor, that make it easy for advertisers (and agencies or resellers acting on their behalf) to move their ad campaign from Google to a competing platform. Using AdWords Editor, advertisers or their agents can download their full campaign structure to a CSV file.⁵ Thereafter advertisers are free to use the data as they deem appropriate, including uploading it onto competing platforms and using third-party tools to manage it.

Google also makes an AdWords API available that enables advertisers to build their own tools, and allows third-party developers to build tools for advertisers and agencies to use. The AdWords API Terms and Conditions impose minimal restrictions on advertisers in the creation or use of their own tools, and they can build most any functionality they deem necessary with AdWords API. In fact, Google specifically exempts advertisers from the requirements of Section III.2.c (referenced in your question).⁶ There are modest limitations on the programmatic bulk input and direct copying of data through the use of AdWords API-based third-party tools. In fact, bulk input restriction is not applicable to all fields, and a number of such fields can be uploaded simultaneously across platforms. This is reflected by the extremely high level of advertiser multi-homing on numerous advertising platforms.

Questions about Google's Use of Its Market Power:

- 5. It's not a crime to be a big. Google's explosive growth over the last decade is a great American success story. Federal law is concerned with the responsibilities that a big company has not abuse that dominance. One classic legal concern is when a dominant company uses its market power to push into new markets and unfairly hurt competitors. This is the chief complaint that other online companies have about Google. In 2007, Google's VP Marissa Mayer said that Google favors its own content:**

³ Brian Fitzpatrick, "Yes You Can Export Data From AdWords, Too", Google Public Policy Blog, October 8, 2009, <http://googlepublicpolicy.blogspot.com/2009/10/yes-you-can-export-data-from-adwords.html>.

⁴ adCenter Desktop, "Import Google AdWords Campaigns to Microsoft adCenter using adCenter Desktop (video)", http://www.youtube.com/watch?v=MyWBPOS8dVM&feature=mfu_in_order&list=UL; Microsoft Advertising, "Import a Google campaign by using Microsoft Advertising adCenter Desktop (Beta)", http://advertising.microsoft.com/small-business/product-help/adcenter/topic?query=MOONSHOT_PROC_ImportGoogleCampaignsUsingDesktopTool.htm (5-step process); *see also* Amber, "Upload Your Google AdWords Campaigns Into Yahoo and MSN adCenter in a Flash!", PPC Hero, March 17, 2009, <http://www.ppchero.com/upload-your-google-adwords-campaigns-into-yahoo-and-msn-adcenter-in-a-flash/> (3-step process).

⁵ AdWords Editor Help, "How Do I Export a Spreadsheet from AdWords Editor," accessed November 1, 2011, <http://www.google.com/support/adwordseditor/bin/answer.py?answer=38657>.

⁶ Google, AdWords API Terms and Conditions, accessed November 1, 2011, <http://code.google.com/apis/adwords/docs/terms.html> (In Section III(2)(c), Google explicitly notes that this section "does not apply to End-Advertiser-Only AdWords API Clients.").

“[When] we roll[ed] out Google Finance, we did put the Google link first. It seems only fair, right? ... That actually has been our policy, since then.... So for Google Maps, again, it’s the first link, so on and so forth. And after that it’s ranked usually by popularity.”

Google calls this practice of directing users to its own products at the top of its search page “Universal Search” – and says it’s an effort to provide a better consumer experience. But if Google’s product always wins, there’s little incentive to make it the best consumer option.

“Google Product Search” is an online shopping comparison product. Originally called “Froogle,” it was seen as a failure for its first five years, with few users—until December 2007, when Google started putting Google Product Search first. Over the next two years, Product Search traffic grew by over 1,200 percent. In 2008, an online retail consultant noted:

“Previously, Google Product Search struggled to get more than 2% of Google users... [but now] Google Product Search has become the largest and most important specialty shopping search engine in existence.... Yet their shopping product itself is still inferior in its presentation and usability to some other leading shopping search engines.”

Q: Mr. Schmidt, how can consumers be assured of a better experience if they are always directed to Google software first?

Before addressing your question let me first offer a little background. Google’s search results seek to achieve one fundamental thing: to connect users to the information they seek. We do this in two key ways. First, we started with conventional search—the traditional ten blue links—which involved crawling and indexing the web and returning results based on general responsiveness. Second, starting in 2001, we began to incorporate search results designed to respond to signals that a user is looking for specific types of information—a map, an image, a local business, a product, a news update, etc. We sometimes call these “thematic” search results.

When presenting thematic results, Google displays them in a way that is designed to make them user friendly. Prior to the launch of universal search in 2007, Google’s thematic results like news were displayed, when relevant, at the top of the search results page. With the introduction of “universal search,” we began to allow these thematic results to “float” from the top position to positions in the middle and bottom of the page, based on our assessment of how relevant conventional and thematic results were to the user’s query.

Other major search engines also incorporate thematic and conventional search results on their search results pages. In fact, the first efforts at blending thematic and conventional search results by other general search engines date back to the late 1990s. It reflects the effort to achieve what one industry expert described in 2001 as the “Holy Grail” of search: “The real Holy Grail of all this will be when search engines can detect the type of search we are doing and feed out more targeted results from appropriate databases.”⁷

But what is crucial to understand is that thematic search results are *not* separate “products and services” from Google. Rather, the incorporation of thematic and conventional results in universal search reflects Google’s effort to connect users to the information that is most responsive to their queries. Because of this, the question of whether we “favor” our “products and services” is based on an inaccurate premise. These

⁷ Danny Sullivan, “Being Search Boxed to Death”, Search Engine Watch, March 4, 2001, <http://searchenginewatch.com/article/2065235/Being-Search-Boxed-To-Death>.

universal search results *are* our search service—they are not some separate “Google content” that can be “favored.”

That said, in keeping with our focus on quality and delivering the most relevant results for consumers, Google constantly experiments with new ways to provide the most relevant information in response to a user’s query. For example, for certain queries, where Google is highly confident that the user wants a specific answer, Google will provide that answer prominently on the page. These direct answers are known as “oneboxes.” Oneboxes are generally displayed to convey an answer that is clear and straightforward, for example, movie showtimes, weather forecasts, mathematical calculations, stock prices, sports scores, and so on. Microsoft’s Bing and Yahoo! display similar “oneboxes” prominently in their results as well, demonstrating their belief that these results are useful for consumers.

The decision whether to display a onebox is determined based on Google’s assessment of user intent. Contrary to what some of Google’s critics suggest, Google does not make money when users click on oneboxes. In fact, the opposite is true: oneboxes that are responsive to what users are looking for may draw users away from the ads displayed on the page. Nonetheless, because oneboxes help Google deliver a satisfying experience to users, Google believes that by displaying them we are enhancing user satisfaction, which is in the long-term best interest of the company.

In some instances, Google has licensed data from third parties for use in our oneboxes. In other instances, we have developed this data ourselves. In either case, whether users are searching for a weather forecast, a mathematical calculation (e.g., [pounds to grams]), or a stock price, Google’s user studies confirm that users seeking this type of information generally do not want to click through to multiple options, whether in the form of ads or more natural links. Rather, users want a quick, direct answer that they can trust is correct. Oneboxes provide fast, accurate answers in response to this user demand.

6. **Google’s effort to build its own local business reviews product provides a good example of where Google’s dominance may cause problems. Yelp.Com and TripAdvisor.Com grew into significant businesses based on user-generated reviews of hotels, restaurants, and stores. Google wanted to enter this market with a competing product – “Google Places.” But “Google Places” had low traffic because it had no reviews.**

Of course, Google had all of Yelp and TripAdvisor’s reviews saved in its search servers. So the company took a shortcut – they “scraped” those reviews from its competitors, and pasted them on “Google Places” pages. TripAdvisor and Yelp cried foul. Those reviews are the heart of their businesses. But Google said if they didn’t like it, they could just withdraw from the search engine entirely. That is totally impractical. When Microsoft tried to do the same thing to Yelp, Yelp threatened to withdraw from Bing, and Microsoft backed down. Google, however, generates most of the traffic to TripAdvisor and Yelp. Those companies would lose half their revenue if they left Google. As TripAdvisor’s CEO has said, “I don’t feel like it’s fair to force me to provide information to a site that’s trying to compete with me.” Google announced just this past July that it would no longer scrape third party reviews and put them up on Google Places pages.

Q: Mr. Schmidt, please indicate with as much specificity as is possible why Google decided to change its policy on scraping competitor content.

Google developed Place pages to help users to access information about a local business. When Google first launched Place pages, Google displayed snippets—a few lines of text—from various review sites for each local business listed, and required that users click through to read the full review. The ultimate goal of Place pages, along with Google’s other thematic local results, was to help users locate local information on the web.

Google entered a two-year licensing agreement with Yelp in 2005 to display the full text of Yelp’s reviews in our conventional search results and our thematic local search results. Two years later, Yelp chose not to renew its agreement with Google. With the expiration of the license, Google no longer displayed the full text of Yelp’s reviews. Thus, we returned to simply showing snippets of third-party reviews within our conventional results as well as our thematic local search results, a practice permitted under the long-established fair use doctrine of copyright law. Snippets generally display about two or three lines of text. For users to access the full text, they must select a link that directs them to the review site. Showing snippets of websites is an important part of search; it enables users to determine whether the site in question is responsive to their queries. It also drives traffic to websites.

If, at any point, Yelp (or any other site owner) wishes to be excluded from Google’s (or any other search engine’s) index, it can—with relative ease—block search engine crawlers using a very simple and common protocol. Specifically, every site owner has the option to use the robots exclusion protocol, also referred to as robots.txt, to signal to Google or any other search engine that they do not want particular webpages, or even an entire site, to be crawled and indexed.⁸ Site owners can easily exclude certain sites or portions of sites from being indexed, and can also specify different protocols for different search engines. The robots.txt protocol—which has been in place for over 17 years—can be utilized either by writing a new robots.txt file,⁹ or by accessing one of many publicly available robots.txt files.¹⁰

As Google continued to develop our thematic local search results, Yelp began voicing concerns regarding how and where, exactly, within Google’s search results its snippets appeared. It’s worth noting that by 2009, search competitors Microsoft Bing, Yahoo!, and Ask.com all integrated third-party review snippets in essentially the same exact way within their respective local search results.

Yelp subsequently requested that Google remove snippets of Yelp reviews in Google’s local search results but continue providing links to Yelp. After a series of business conversations with Yelp in an attempt to address Yelp’s numerous concerns, Google agreed to comply with Yelp’s request. After the requested changes were implemented, snippets from Yelp’s website continued to appear in conventional search results, and no longer appeared in the thematic local search results.

In July 2011, Google redesigned Place pages. One of the major changes, implemented after careful thought about the future direction of Place pages and feedback from third-party review sites, was removing snippets of reviews from sites like Yelp, TripAdvisor, and CitySearch. Instead, Google chose to feature reviews from our own users, with links to third-party review sites. In addition, the “star rating” and “total review count” were modified to reflect only those ratings and reviews that have been submitted by Google users.

⁸ robots.txt is an industry standard that allows a site owner to control how search engines access their web site. Access can be controlled at multiple levels – the entire site, through individual directories, pages of a specific type, or even individual pages. Basically, robots.txt is a structured text file that can indicate to web-crawling robots that certain parts of a given server are off-limits. This allows search engines such as Google to determine which parts of a website a site owner wants to display in search results, and which parts to keep private and non-searchable. Dan Crow, “Controlling How Search Engines Access and Index Your Website”, The Official Google Blog, January 26, 2007, <http://googleblog.blogspot.com/2007/01/controlling-how-search-engines-access.html>.

⁹ There are a number of resources available online that provide users with information on coding robots.txt files. *See e.g.* About/robots.txt, August 23, 2010, <http://www.robotstxt.org/robotstxt.html>.

¹⁰ A non-comprehensive list of robots.txt files submitted by independent programmers is available here: <http://www.robotstxt.org/db.html>.

Commentators like Frank Reed of Marketing Pilgrim noted that these changes “essentially . . . gives Yelp and TripAdvisor their wish,” while TechCrunch noted that “this should be a welcome change to third-party source of reviews like Yelp and TripAdvisor.”¹¹

Yelp has aired numerous concerns in the press over the past few years, and although Google has tried to act responsibly in addressing some of those concerns, ultimately Google builds our search results for the benefit of users, not websites. At all times, Google’s primary motivation has been improving the search experience for our users by providing the most relevant and useful information in response to their queries. In the end, if users are unhappy with the answers Google provides, the openness of the web ensures that they can easily switch to Yelp or any other site with just one click.

Questions about Google’s Market Power in Smartphone Operating Systems

- 7. Google’s dominant position in the smartphone market is under increasing scrutiny. Google’s Android operating system now runs on over 50% of all smartphones. Nearly a half million new Android phones are activated daily. The growth of Android’s smartphone market share raises questions around whether Google’s market power is being unfairly leveraged to promote its other products – like its search engine, which runs on all Android phones, or its “Places” application, which seems to ship with every Android phone.**

Q: Mr. Schmidt, does Google occupy a dominant position in the smartphone operating system market?

Google does not have a dominant position in the smartphone market. According to comScore, Android operates on only 34.1% while Apple’s iOS runs on 43.1%.¹² Moreover, competition in the market for mobile software platforms is fierce. Innovation in the mobile space is frenetic; competitors are racing to introduce new devices which have the potential to radically change mobile market dynamics.

Furthermore, Android is a joint effort among many members of the mobile market including OEMs, carriers, application developers and chipset manufacturers. As a joint endeavor, Android’s success depends on the success of these partners—not just Google’s success.

One of the greatest benefits of Android is that it fosters competition at every level of the mobile market—including among application developers. Google respects the freedom of manufacturers to choose which applications should be pre-loaded on Android devices. Google does not condition manufacturers’ access to or use of Android on pre-installation of any Google applications or on making Google the default search engine. Google also does not condition Android compatibility determinations on pre-installation of Google applications or making Google the default search engine.

- 8. The most prominent claim of Google unfairly leveraging its market power is the case of Skyhook Wireless, who recently filed suit against Google arguing that the company pressured Motorola and other manufacturers into dropping Skyhook’s mobile location**

¹¹ Frank Reed, “Google Places Update Puts Focus on Google”, Marketing Pilgrim, July 22, 2011, <http://www.marketingpilgrim.com/2011/07/google-places-update-puts-focus-on-google.html>. Erick Schonfeld, “Google Places Stops Stealing Reviews”, TechCrunch, July 21, 2011, <http://techcrunch.com/2011/07/21/google-places-stops-stealing-reviews/>.

¹² “Smartphones and Tablets Drive Nearly 7 Percent of Total U.S. Digital Traffic,” comScore press release, October 10, 2011, http://www.comscore.com/Press_Events/Press_Releases/2011/10/Smartphones_and_Tablets_Drive_Nearly_7_Percent_of_Total_U.S._Digital_Traffic.

service in favor of Google's. Emails from within Google made public as part of that lawsuit showed significant concern over Motorola's decision to go with Skyhook instead of Google's software. One email from Steve Lee, an Android product manager, speculates that Skyhook may have beaten out Google because it's "a hungry start-up" – or because Skyhook's location accuracy was superior to Google's.

Google ultimately forced Motorola and others to drop Skyhook's technology from their phones, arguing that it violated the company's Android "compatibility" requirements. But Dan Morrill, a manager in the Android group, noted at the time that it was obvious to manufacturers that in general, "we are using compatibility as a club to make them do things we want." Last month, Google announced that it intends to buy Motorola outright.

Q: Mr. Schmidt, does Google have an obligation to ensure that it does not abuse its smartphone market position to favor its own products, and if so, what policies are in place to ensure that such abuse does not occur?

Google's dispute with Skyhook is the subject of pending litigation, so I cannot comment extensively. However, as is reflected in publicly available filings, Google did not force either Motorola or Samsung to remove Skyhook software from their devices to receive certification as an Android compatible device. Google merely requested that these manufacturers use a version of the Skyhook software that was consistent with the Android Compatibility Definition Document ("CDD"). Skyhook possessed such a version of its software but refused to provide it to Motorola and Samsung. Thus, Google never was given a copy of the compliant software to review, which is why the Skyhook software was ultimately never deemed compatible by Google.

As to Mr. Morrill's remarks, reviewed in their full context express they reflect his belief that Google's efforts to maintain compatibility across different devices *could be misperceived* as a way for Google to improperly influence manufacturers. Google does not in fact use compatibility in this way. Mobile operating system competition is fierce—Apple, RIM (Blackberry), and Microsoft are very significant competitors—and carriers and handset manufacturers have many options other than Android. Google is committed to Android's success and to maintaining our strong partnerships with device manufacturers.

Google designed Android as an open source platform to foster customization by manufacturers of mobile software and hardware. In contrast to closed, proprietary operating systems, Android allows manufacturers to modify their own implementations of Android to create their own unique features and user interfaces. Android is also particularly adaptable to new hardware configurations and chipsets. By allowing broader differentiation in software and hardware, Android enhances competition and consumer choice. There are more than 500 models of Android devices on the market.

Google has undertaken extensive efforts to protect consumers and application developers to ensure their applications run seamlessly on all Android devices. Google, with the support of our Android partners, has identified certain specifications, such as minimum screen size and security features, that help ensure applications run flawlessly across device models. These specifications are reflected in the Android CDD, which is published on Android Open Source Project's website. Google and our partners believe that this baseline preserves the maximum amount of manufacturer freedom to customize Android, while simultaneously protecting Android developers, who need consistency and rely on minimum elements appearing on all Android devices, and Android customers, who may legitimately expect that Android applications will run on their Android devices.

Questions about Google's Market Dominance and Facilitation of IP Infringement

- 9. As discussed during the September 21, 2011 hearing, on August 24, 2011, the Department of Justice announced that Google had been fined \$500 million for allowing online Canadian**

pharmacies to place advertisements through its AdWords program, resulting in the unlawful importation of controlled and non-controlled prescription drugs into the United States. The Department's press release noted that "Google was aware as early as 2003, that generally, it was illegal" to ship pharmaceuticals into the U.S.

Based upon the questions, and your responses to those questions, Google is also well aware that online copyright infringement online occurs on a massive scale and that it is a "problem that [Google] takes very seriously."

In light of the Department of Justice's statement that it "will continue to hold accountable companies who in their bid for profits violate federal law," Google's approach to ensuring it does not profit from intellectual property theft should not only be of great interest to the Committee, but Google as well.

Q: Mr. Schmidt, to what extent does Google take steps to ensure that it does not profit from the violation of federal copyright or trademark laws?

Google believes strongly in protecting copyright and other intellectual property rights. We understand that despite the overwhelmingly positive and legitimate uses of Internet services and technologies, there will be some who misuse these for infringing purposes. Google has been an industry leader in developing innovative measures to protect copyright and help rightsholders control their content online. For example, Google has expended more than 50,000 engineering hours and more than \$30 million to develop Content ID, our cutting-edge copyright protection tool that is helping rightsholders make money on YouTube. This powerful technology scans the more than 48 hours of video uploaded to YouTube every minute and, within seconds, compares it against more than six million references files provided by participating rightsholders. Content ID has proven to be an enormous success and is being used by a long list of content owners worldwide to make their own choices about how, where, when, or whether they want their content to appear on YouTube.

As is true for all Internet companies, the critical foundation for Google's anti-piracy efforts remains the Digital Millennium Copyright Act ("DMCA"), the seminal law Congress passed in 1998 to address copyright protection online and promote the worldwide expansion of e-commerce. Congress rightly understood that some material posted by the millions of people who use online services will infringe copyright, and that online service providers in the ordinary course of their operations engage in copying and other acts that expose them to potential copyright liability. Congress also recognized that requiring online providers to engage in pre-screening of every user-posted text, picture, and video would inhibit free expression and stifle the growth of the Internet.

At the request of copyright owners, Google in 2010 took action against approximately three million allegedly infringing items across all our products, which accounts for far less than 1% of all the materials hosted and indexed by Google. We received takedown notices by letter, fax, email, and web forms from all sorts of copyright owners (including movie studios, record labels, adult entertainment vendors, and needlepoint pattern publishers) from 70 countries and in a wide variety of languages. Hundreds of Google employees work on copyright and combating infringement online, including a growing team of employees dedicated to receiving, reviewing, and responding to DMCA notices. We check to make sure that the notices are complete and are not attempts by competitors or others to use invalid copyright claims to censor speech with which they disagree.

Last December, Google announced that we were designing new tools to enable us to act on reliable copyright takedown requests within 24 hours. We are happy to report that our average turnaround time for DMCA notices received from those using our new tools is now less than seven hours. Moreover, submissions using our new tools now account for more than 75% of all URLs identified to us for web search.

In addition, Google has (in compliance with the DMCA) implemented repeat infringer policies on all relevant products. In each of these products, repeat infringer terminations constitute far fewer than 1% of the total subscriber accounts.

We also employ a wide array of procedures and expend considerable financial resources to prevent our advertising products from being used to monetize material that infringes copyright. For example, our AdSense program enables website publishers to display ads alongside their content. Our policies prohibit the use of this program for infringing sites, and we use automated and manual review to weed out abuse. In 2010, we took action on our own initiative against nearly 12,000 sites for violating this policy. And in 2011, we have already taken action against more than 12,000 sites. We also respond swiftly when notified by rightsholders. We recently agreed to improve our AdSense anti-piracy review procedures and are working together with rightsholders on better ways to identify websites that violate our policies.

We also committed last year to prevent terms that are closely associated with piracy from appearing in autocomplete. We have begun working to prevent several piracy-related terms from appearing in autocomplete, and have asked content industry representatives to suggest other terms for consideration that won't overly restrict legitimate speech.

We are also helping to lead industry-wide solutions through our work with the Interactive Advertising Bureau ("IAB"), comprised of more than 460 leading media and technology companies. The IAB has established quality assurance guidelines through which participating advertising companies will take standardized steps to enhance buyer control over the placement and context of advertising and build brand safety. Google has certified our compliance with these guidelines.

Google also expends great effort to fight the challenge of counterfeit goods. Just as in the offline world, people misuse legitimate online services to try to market counterfeit goods. This abuse hurts our users and our business; combating it is central to Google's operations. The integrity and quality of the sponsored links displayed alongside Google search results are of paramount importance to our overall success. A Google user duped by a fake good is less likely to click on another Google ad in the future. For this reason, Google undertakes enormous efforts to root out ads for sites that sell counterfeit goods.

Google has clear policies against advertising counterfeit goods, and we expend considerable resources to enforce those policies. In the last year, we shut down approximately 95,000 accounts for attempting to use sponsored links to advertise counterfeit goods, and more than 95% of these accounts were discovered through our own detection efforts. Even more ads themselves were blocked on suspicion of policy violations. Our automated tools analyze thousands of signals to help prevent bad ads from being shown in sponsored links. Last year alone we invested \$60 million in efforts to prevent violations of our ad policies.

Despite the best efforts of the online advertising industry, proactive measures will never be a complete solution. Some publishers deliberately take steps to evade detection systems, meaning bad sites will invariably slip through. Technologically sophisticated players use tactics like "cloaking" (showing one version of their site to the public and a different version to Google) to evade the protections that Google and other companies put in place. Because of these tactics, coupled with the sheer volume of ads served per day, finding a particular ad on the web that has circumvented our systems may always be possible. While the industry is aggressively going after this abuse, it is clearly a cat-and-mouse game to stay ahead of the bad actors, and Google is committed to being an industry leader in eradicating this behavior.

We also believe that making high-value content available in authorized forms is a crucial part of the battle against online infringement. With 800 million people per month coming to YouTube, we have expanded our movie rental services, made it easier for indie labels to become YouTube partners and share revenue when their music is played (even for user-generated content), and launched a feature to enable fans to buy artists' merchandise, music downloads, and concert tickets. And we've launched the Google eBookstore, featuring a wide array of books from authors and publishers. We also continue to improve YouTube's Content ID

system to help more copyright owners (including songwriters and music publishers) to monetize their works and we are working with WIPO on a rights registry that will help African musicians license their works.

In addition to launching our own authorized services, we also launched Music Rich Snippets, which allow other legitimate music sites to highlight content in the snippets that appear in Google's conventional web search results. Rhapsody and MySpace are among the first to implement this feature, which has been developed using open web markup standards, and we are looking forward to more sites and search engines marking up their pages. We hope that authorized music sites will take advantage of Music Rich Snippets to make their preview content stand out in search results.

10. The DOJ announcement mentions that the \$500 million forfeiture, one of the largest ever in the United States, represents, “the gross revenue received by Google as a result of Canadian pharmacies advertising” through Google services.

Q: Mr. Schmidt, what are the gross revenues received by Google as a result of advertising the company has placed on websites that have been identified by law enforcement, copyright owners, or Google itself as a venture that offers unauthorized copies of copyrighted materials?

As described above, Google believes strongly in protecting copyright and undertakes enormous efforts to root out publisher sites who violate our policies against using AdSense for sites that infringe copyright. Google has no interest in making or keeping any revenue from infringement and therefore our target revenues are zero.

We employ a wide array of procedures to prevent infringing sites from using our ads products, and we expend considerable financial resources to find and eject advertisers and publishers who violate our policies. For example, publishers who want to join the AdSense program are vetted upon joining for their compliance with program policies. In addition, automated systems monitor the pages on which AdSense ads appear, and bring potentially problematic material to the attention of human reviewers. Finally, Google responds swiftly when notified by a rightsholder that our AdSense program is being used to monetize infringing or counterfeit sites, and we have policies in place to terminate the accounts of repeat offenders. The volume of complaints in this regard is not high, and represents far less than 1% of all our AdSense partner sites.

Perhaps contrary to perceptions, in many ways we lose revenue opportunities from the actions of bad actors who traffic in counterfeit goods or infringing content. Often stolen credit cards are involved, and we don't collect on accounts that are terminated for counterfeit violations. Infringing or counterfeit ads also cost us space that we could have used for a legitimate ad. And a Google user duped by a fake good is less likely to click on another Google ad in the future.

Lastly, it is important to note that the DOJ announcement you referenced states that the figure “represents the gross revenue received by Google as a result of Canadian pharmacies advertising through Google's AdWords program, *plus gross revenue made by Canadian pharmacies from their sales to U.S. consumers*” (emphasis added).

11. The August 24, 2011 release stated that, “this investigation is about the patently unsafe, unlawful, importation of prescription drugs by Canadian on-line pharmacies, with Google's knowledge and assistance, into the United States, directly to U.S. consumers... It is about taking a significant step forward in limiting the ability of rogue on-line pharmacies from reaching U.S. consumers, by compelling Google to change its behavior.” As you know, I am a cosponsor of the PROTECT IP Act, which gives the government the ability – after an investigation by federal prosecutors and review by a federal judge – to cut-off a foreign-based website that profits by facilitating the online theft of works from the U.S. marketplace. This proposal was unanimously approved by the Senate Judiciary Committee earlier this year.

Q: Mr. Schmidt, to what extent are you aware of Ads by Google, AdSense, DoubleClick or any other Google advertising service on offshore websites that are not authorized to make available the copyrighted music or movies that are the heart of those websites?

Google employs a wide array of procedures and expends considerable financial resources to prevent our advertising products from being used to monetize material that infringes copyright. Our policies prohibit the use of our advertising services on infringing sites, and we use automated and manual review to weed out abuse. For example, last year, we took action on our own initiative against nearly 12,000 sites for violating this policy. And in 2011, we have already taken action against more than 12,000 sites. We also respond swiftly when notified by rightsholders. For AdSense, our current average response time is 24 hours.

Google supports the PROTECT IP Act's goal of targeting foreign "rogue" websites that are dedicated to copyright infringement or counterfeiting. Google could support a "follow the money" legislative approach, which would choke off revenue to "rogue" sites who are dedicated to providing infringing access to copyrighted material and/or counterfeit goods. Consistent with our policies, this means payment services (e.g., Google Checkout) and advertising networks (e.g., Google AdSense) would not be allowed to provide services to rogue sites. We are also mindful that the Internet is key to American economic growth, and we have serious concerns about certain proposed legislative provisions that not only stifle innovation and threaten the Internet economy, but also jeopardize the millions of small businesses that rely on the web everyday.

As you know, one of the most discussed provisions of the PROTECT IP Act has been the definition of an "[i]nternet site dedicated to infringing activities," and earlier versions of this legislation raised serious concerns for legitimate U.S. businesses. Distinguishing whether, for example, a given video is "authorized" to be made available on a given site is not a simple task. It is the rightsholders who know what material they own the rights to, where in the world, and for what purpose. That is why the structure of the shared responsibility of the DMCA works effectively to take down the content that rightsholders have specified. For search engines, the DMCA process already enables rightsholders to remove infringing material that is located on foreign rogue sites.

12. Q: Mr. Schmidt, to what extent have you been contacted by property owners regarding the presence of ads that enable such rogue websites to reap financial gain?

Google employs a wide array of procedures to prevent infringing sites from using our ads products, and we expend considerable financial resources to find and eject advertisers and publishers who violate our policies. For example, publishers who want to join the AdSense program are vetted upon joining for their compliance with program policies. In addition, automated systems monitor the pages on which AdSense ads appear, and bring potentially problematic material to the attention of human reviewers. Finally, Google responds swiftly when notified by a rightsholder that our AdSense program is being used to monetize infringing or counterfeit sites, and we have policies in place to terminate the accounts of repeat offenders. The volume of complaints in this regard is not high, and represents far less than 1% of all our AdSense partner sites. We get lots of different types of complaints, and it can take time to investigate various claims, such as a claim that a given product is being distributed without authorization.

13. Q: Mr. Schmidt, how does Google respond when contacted by a property rights owner or advertiser regarding Google advertising on a site offering or distributing its content or product without authorization? On average, how long does it take Google to respond to such a complaint?

We employ a wide array of procedures and expend considerable financial resources to prevent our advertising products from being used to monetize material that infringes copyright. For copyright, as noted above, last year we took action on our own initiative against nearly 12,000 sites for violating our policies against using

AdSense for sites that infringe copyright, and we have certified our compliance with IAB's guidelines. As we also noted above, though, proactive measures will never be a complete solution, even with the best efforts of the online advertising industry. We respond swiftly when notified of violations of our AdSense policies by rightsholders and recently agreed to improve our AdSense anti-piracy review procedures. Our current average response time is 24 hours. We are working together with rightsholders on better ways to identify websites that violate our policies.

Google also has clear policies against advertising counterfeit goods, and we expend considerable resources to enforce those policies. We work with over one million advertisers in 190 countries. In the second half of 2010, we received legitimate complaints about less than 0.25% of advertisers. In the last year, we shut down approximately 95,000 accounts for attempting to use sponsored links to advertise counterfeit goods, and more than 95% of these accounts were discovered through our own detection efforts. Even more ads themselves were blocked on suspicion of policy violations. Our automated tools analyze thousands of signals to help prevent bad ads from being shown in sponsored links. Last year alone we invested \$60 million in efforts to prevent violations of our ad policies.

But there is no silver bullet. It's a whack-a-mole problem, as we constantly work to improve our practices against sophisticated entities trying to game our protections. While Google's tools are quite effective, it is incredibly difficult for Google to identify a counterfeit product being advertised. This is a challenging task, even for brand owners. Online advertising companies, which do not take possession of physical goods, cannot know for sure whether any particular item out of millions advertised is indeed a counterfeit. As has always been the case with newspapers and offline advertising platforms, it is essentially impossible for Google to block all attempted abuse.

14. Q: Mr. Schmidt, what technologies is Google developing to ensure that its companies do not place ads on sites engaged in piracy and counterfeiting?

Google has committed significant resources to developing technology that enables detection of content that violates our copyright and counterfeit policies. We use sophisticated automated tools, which analyze thousands of signals along every step of the advertising process. We devote significant engineering and machine resources to prevent violations of our ad policies including our anti-counterfeiting policy. In fact, we invested over \$60 million last year alone in these efforts. Google also regularly refers to and cooperates with law enforcement on fraud and abuse investigations, including those relating to counterfeit goods.

15. The FDA stated that it will hold "all contributing parties accountable for conduct that results in vast profits at the expense of the public health." While the theft of music and movies does not endanger the public health, it does endanger consumers who patronize professional looking websites that are validated and made to feel legitimate with "Ads by Google." It endangers consumers because it exposes them to liability for the theft of copyrighted materials. It endangers consumers who provide credit card and other personal information to criminal organizations. It exposes their computers to malware, viruses and spam, and, is not only wrong, but also a drain on the US economy. Equally important, it allows criminal operations – and your company – to profit from crime.

Q: Mr. Schmidt, what can you and others in the online advertising sector do to devise a workable plan that holds all parties accountable for conduct that results in vast profits for those operating online criminal enterprises predicated on the theft of American-made intellectual property?

Google supports developing effective policy and technology tools to combat large-scale commercial infringement. Google has dedicated tens of millions of dollars in engineering and other resources to help weed out notorious bad actors.

Our policies prohibit the use of our AdSense and AdMob programs on web pages (AdSense) or apps (AdMob) that include infringing materials or seek to sell counterfeit goods. We employ a wide array of procedures to prevent infringing sites from using our ads products, and we expend considerable financial resources to find and eject advertisers and publishers who violate our policies. For example, publishers who want to join the AdSense program are vetted upon joining for their compliance with program policies. In addition, automated systems monitor the pages on which AdSense ads appear, and bring potentially problematic material to the attention of human reviewers. Finally, Google responds swiftly when notified by a rightsholder that our AdSense program is being used to monetize infringing or counterfeit sites, and we have policies in place to terminate the accounts of repeat offenders. The volume of complaints in this regard is not high, and represents far less than 1% of all our AdSense partner sites.

Moreover, Google has long enabled advertisers directly to control where their ads appear. Using available exclusion tools for our ad programs, Ads by Google advertisers can exclude domains of their choosing from displaying their ads (whether because of infringement or any other concern). Similarly, if an advertiser discovers its ads running on an objectionable site that it had not previously been aware of, that advertiser can use the tools to prevent any future appearances on that site.

While we are proud of the policies and procedures we have in place to prevent improper use of our ads products, we are always striving to improve. As mentioned above, we will continue to work with rightsholders to identify, and, when appropriate, expel violators from the AdSense program.

In addition, Google is helping to lead industry-wide solutions to prevent legitimate ads from appearing on illegitimate sites through our work with the IAB, comprised of more than 460 leading media and technology companies. The IAB has established quality assurance guidelines through which participating advertising companies will take standardized steps to enhance buyer control over the placement and context of advertising and build brand safety. Despite the best efforts of the online advertising industry, however, technologically sophisticated players use tactics like “cloaking” (showing one version of their site to users and a different version to Google) to evade the protections that Google and other companies put in place. While the industry is aggressively going after those who abuse online advertising programs, it is clearly a cat-and-mouse game and efforts to legislate in this area must be careful not to target ad platforms for abuses of their systems that could not reasonably be prevented.