



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 – Senator Cornyn to Mr. Schmidt

1. At the hearing, you referenced Google's Non-Prosecution Agreement ("NPA") with the U.S. Department of Justice. As you may recall, I asked you about that agreement and provided you the opportunity to provide a complete and accurate picture of Google as a corporate citizen. There appeared to be some confusion as to whether you could discuss the NPA. You stated that you had been advised by your lawyers not to "speak about the details" or "comment" on the NPA.

- a. Did you know before your testimony that the agreement explicitly states that you are "prohibited from contradicting" the factual statements?

Under the terms of the NPA, Google and its management have to be mindful of the NPA's limitations on making public statements about the facts or the investigation to avoid any breach of our obligations under it. For this reason, I was very measured in my remarks at the hearing, but as you state and as I understand better now, I can restate the facts stipulated in the NPA and could have restated those facts with you at the hearing. I apologize for my confusion.

- b. Do you agree that Google is expressly permitted to defend any litigation or investigation or proceeding as long as you do not contradict the factual statements?

Yes. Of course, the Department of Justice is the arbiter of what contradicts the factual statements in the NPA, and Google intends to be very careful not to breach our obligations. The NPA's provisions regarding public statements permissible by Google speak for themselves. That being said, it is also true that Google must at all times be incredibly mindful of the very limitation you reference, that Google not contradict, intentionally or unintentionally, any of the factual statements in the NPA.

2. I would like to provide you an opportunity to clarify the record with regard to one of my questions. I asked, regarding Google's conduct set forth in the NPA: *"Was it ... the result of oversight or inadvertence or were there some employees in the company that were doing this without your knowledge..."* I believe that you responded as follows: *"Well, certainly not without my knowledge. Again, I have been advised, unfortunately, I'm not allowed to go into any of the details and I apologize, Senator, except to say that we're very regretful and it was clearly a mistake."*

Your answer would seem to suggest that you did indeed have knowledge of the conduct set forth in paragraph 2 of the NPA. I understand that you may not have heard my question accurately and that sometimes answers can be misconstrued. I would like to give you an opportunity to clarify your answer to my question and answer some related questions.

- a. **Did you know that Canadian online pharmacies were advertising prescription drugs for sale in the U.S. using Google's AdWords or other Company advertising platforms between 2003 and 2009?**
- b. **When did you learn of this conduct?**
- c. **How did you learn of this conduct?**
- d. **Did you alert others in the company about this conduct? Who did you alert? When did you do so? What did you say or write in alerting others in the company regarding this conduct?**

As I'm sure you can appreciate, Google has a wide variety of policies governing ads in many different countries. I do not recall the specifics of when these particular policies first came to my attention. Sometime around 2004, it was brought to management's attention generally that there were some potential issues to consider regarding pharmacies advertising via AdWords, in violation of Google's policies, and I believe I first learned of this issue around that time through meetings and internal discussions. The company's policy did not block licensed Canadian pharmacies certified by SquareTrade and later PharmacyChecker to advertise in the United States. SquareTrade verified whether online pharmacies seeking to advertise through AdWords were licensed in at least one state in the United States or in Canada. SquareTrade required pharmacies seeking to advertise through AdWords to self-certify that they would act in accordance with applicable U.S. laws and regulations. As for PharmacyChecker, although it did not certify online pharmacies that shipped controlled prescription drugs, Canadian or otherwise, it did certify advertisers of non-controlled prescription drugs, including distributors of non-controlled prescription drugs located in Canada. Some advertisers did not qualify for certification by either SquareTrade or PharmacyChecker, but nonetheless were able to circumvent Google's certification requirements by, for example, setting up advertising campaigns intended for audiences outside the U.S., thus not requiring certification, and then later changing the geo-targeting of those campaigns to include the U.S. Some advertisers also circumvented Google's manual review of ads, for example, by not including pharmaceutical terms triggering manual review by Google's systems in the text of the ads. The NPA—specifically paragraphs 2(j) and 2(l) through 2(n)—sets forth the pertinent facts about the timing and duration of that advertising. Google is not in a position to comment further on the matter for the reasons explained above.

3. **As I noted during the hearing, one of the reasons I asked you about this topic is because I believe that it speaks directly to the issue of trust. I understand from your testimony that the conduct that was covered in the NPA has nothing to do with the company's current advertising practices or policies. Because the issue of trust is so important, I would like to give you the opportunity to describe in more detail just how those practices have changed and when they did so.**

- a. **The NPA, paragraph 2(q), states that Google became aware of the government's investigation in 2009. When in 2009?**

Google became aware of the government's investigation at the end of May 2009.

- b. **What steps has Google taken to prevent this sort of thing from happening again?**

We agree that complying with the law and maintaining the trust of our users is essential. Google changed our policy regarding Canadian pharmacies in March 2010. Since that time, the AdWords program allows only online pharmacies based in the United States to run ads appearing in the United States. Further, Google became the first online search provider to require these U.S. online pharmacies to be accredited by the National Association Boards of Pharmacy VIPPS program. The VIPPS certification is stringent and fewer

than 20 online pharmacies nationwide are currently certified by VIPPS. Google also continues to improve our existing automated screening programs and developed new tools to enhance our ability to enforce and monitor advertisers' compliance with these policies. As part of this enforcement effort, Google contracted with an independent company with knowledge of online pharmacies to conduct regular "sweeps" of ads running via AdWords to find any drug- or online-pharmacy-related advertisements from advertisers who manage to evade Google's screening programs. The NPA itself notes the changes Google has made to our policy and to our enforcement efforts. Google also took a lead role in a cross-industry effort to collaborate with government bodies to attempt to stop the problems of online pharmacy advertising at the source.

c. What, if any, disciplinary measures has Google taken against any of its executives or employees who allowed the Canadian pharmacies to illegally sell drugs in the U.S.?

d. Was anyone terminated? Who? When?

The failure to block U.S.-focused advertisements from licensed Canadian pharmacies that were certified by SquareTrade and then PharmacyChecker to advertise in the United States came as the result of a number of company decisions. Accordingly, Google has not taken any disciplinary action against any employees based on the existence of ads by Canadian pharmacies certified by SquareTrade and then PharmacyChecker. Of course, Google does discipline and even terminate employees for violations of Google policies, including our policies against various types of ads. In the course of our investigation into online pharmaceutical advertisements, we disciplined or terminated several employees who had violated our policies.

e. Are you confident that the steps the company has taken will prevent the sale of illegal drugs through ads placed via Google?

The steps Google has taken to prevent pharmacies from unlawfully advertising on Google, described above, are robust and significant, and our experience with these steps since implementing them over a year ago shows very good results. History has shown that some rogue pharmacies find ways to circumvent Google's safeguards, but we are constantly evolving our practices to meet these challenges. One way we are addressing these rogue actors is by contracting with an independent company with knowledge of online pharmacies to conduct regular "sweeps" of ads running via AdWords to find any drug- or online-pharmacy-related advertisements from advertisers who manage to evade Google's screening programs. Upon receipt of those reports, offending advertisements are removed, and the advertiser accounts for these rogue pharmacies are terminated. Of course, this is a continuing arms race, involving millions of ads every day covering a wide range of products and services, that faces us and other online platforms. We use a variety of sophisticated filters, scans, and tools for human review to identify ads that may be for illegal products or that otherwise violate our policies, and we regularly update our policies to address new categories of ads. Bad actors in many countries around the world are constantly working to circumvent these barriers, and Google is actively improving our detection and deterrence tools.

4. I remain concerned about the reasons behind the conduct that became the subject of the DOJ investigation into Google's advertising practices. I understand that you cannot make any statements contradicting the facts set forth in paragraph 2 of the NPA. Without contradicting any statements in paragraph 2 of the NPA, please provide answers to the following questions:

a. Who at Google would have been in a position to prevent the conduct that led to the government's investigation and the Statement of Facts in the NPA?

Not blocking licensed Canadian pharmacies certified by SquareTrade and PharmacyChecker from advertising in the United States was the result of a continuing discussion involving a variety of policy and implementation

questions over several years. In hindsight it is possible that any of a number of individuals might have been able to influence those policies and practices.

- b. Whose responsibility was it to respond to the two letters sent to Google in 2003 and 2008 by the National Association of Boards of Pharmacy warning Google that it was illegal to import prescription drugs from Canada? Did you ever see those letters? Did Google respond to them? See NPA, Para 2(f)**

Google receives numerous inquiries and correspondence from many different parties about our products and services every day. We do our best to review correspondence and take appropriate action, which may or may not include a response to the sender. I understand that the National Association of Boards of Pharmacy (“NABP”) sent Google the 2003 letter after we requested from it information regarding online pharmacies and the VIPPS program. Google considered the information provided by the NABP as we reviewed and updated our online pharmacy policies in 2003 and 2004. I myself do not recall seeing either letter.

- c. What ultimately caused the conduct that is described in paragraph 2 of the NPA to cease?**

Google disallowed Canadian pharmacies from advertising in the United States, and took the other steps described in response to Question 3b above, as a result of the government’s investigation and our ongoing efforts to improve our policies and enforcement tools.

- d. Who were the members of the Company's policy group in 2003 through 2009?**

Google’s advertising policy team had numerous members throughout this time period, many of whom no longer work at Google or on the policy team. As I noted earlier, not blocking licensed Canadian pharmacies certified by SquareTrade and PharmacyChecker from advertising in the United States was the result of a continuing discussion involving a variety of policy and implementation questions over several years, and involved many employees in the company beyond those on the policy team.