



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

Sen. Kohl’s Follow-Up Questions for the Record for Eric Schmidt

1. At the hearing, we discussed the 2007 statement of Google senior executive (currently Vice President for Location and Local Services) Marissa Mayer that Google used to rank links “based on popularity, but when we roll[ed] out Google Finance, we did put the Google link first. It seems only fair, right? We do all the work for the search page and all these other things, so we do put it first... That has actually 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.”
 - a. At the hearing, I asked you whether Ms. Mayer’s statement was an accurate statement of Google policy. You replied, “I wasn’t there [when Ms. Mayer made the statement], so maybe I should use my own voice on this question,” and later added, “I’ll let Marissa speak for herself on her quote.” You never stated whether Ms. Mayer correctly described Google’s policy in 2007. However, in answering Senator Blumenthal’s question, “As I understand it, certain Google properties – Maps, for example – are at the top of the search results regardless of the algorithm or formula or methodology,” you responded “Right. Sure.” So does Ms. Mayer’s quote accurately describe Google’s policy regarding Google content (not only Google Finance) at the time she said it 2007? Did this policy change at any time? If so, when, and what was the change(s)? In general, does Google put the Google Finance and other Google content, such as Google Maps, Local Search, Shopping, etc., results at or near the top of non-sponsored search results on the search results page (or above the search results), regardless of its popularity?

Before I address Ms. Mayer’s statements, let me first address some questions of terminology. To begin with, 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.”¹

But what is crucial to understand is that universal 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 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.

With regard to Ms. Mayer’s quote, it is my understanding that she was referring to the placement of links within a onebox (but not the ranking of other thematic results within search results), and her description was accurate.

- b. If your answer is that Ms. Mayer did accurately describe Google’s policy, doesn’t ranking Google’s sites automatically first in this manner give Google an unfair competitive advantage over non-Google web sites? And doesn’t this policy deter new innovative services from entering the market?**

For certain types of queries, such as stock quotes and weather forecasts, our studies show that users like direct answers. As stated above, it is my understanding that Ms. Mayer was referring to the placement of links within a onebox (but not the ranking of other thematic results within search results), and her description was accurate.

¹ Danny Sullivan, “Being Search Boxed to Death”, Search Engine Watch, March 4, 2001, <http://searchenginewatch.com/article/2065235/Being-Search-Boxed-To-Death>.

Google's primary goal is to give users the information they seek, and if for any reason we do not succeed in providing the best answers for our users, they can and will quickly switch to another source of information.

With respect to the second question, Google's efforts to deliver responsive results to our users in no way harm competition or deter innovators from entering the market. To the contrary, Google actually provides free promotion to millions of innovative websites through our search results. Indeed, innovation on the Internet is happening at an unprecedented rate. As the CEO of Blekko (a relatively new firm that offers a general search engine and recently attracted \$30 million in additional financing) noted last month: "We don't need federal intervention to level the playing field with Google. Innovation and competition are far more powerful instruments."²

The Internet is incredibly dynamic and new companies with tremendous ideas are being created every day. Facebook, Twitter, and LinkedIn all achieved extraordinary success long after Google began integrating thematic algorithms into our search results—and all are changing the way in which users think about finding information online. Already, many users utilize these sites, and others like them, to find the information they need. The New York Times, for example, receives only 16% of its web traffic from Google.³ Similarly, ComedyCentral.com receives more traffic from Facebook than it does from Google.⁴ Amazon, Travelocity, and Expedia, among others, provide thematic search results and do not need Google to find an audience—they are quite successful in finding an audience on the Internet.

Moreover, history shows that popular technology is often supplanted by entirely new models. Even in the few weeks since the hearing, Apple has launched an entirely new approach to search technology with Siri, its voice-activated search and task-completion service built into the iPhone 4S. As one respected technology site reported: "[E]veryone keeps insisting that Apple will eventually get into the search engine business. Well they have. But not in the way that everyone was thinking. Siri is their entry point."⁵ Another commentator has described Siri more simply as intended to be a "Google killer."⁶

Finally, we do not have to speculate as to whether there are new entrants in vertical search services such as comparison shopping and local search and review sites. There are new entrants in these market segments all the time. A new comparison shopping site, FindTheBest, launched by the co-founder of DoubleClick last year, just raised \$6 million in venture funding over the summer. Cheapism is a comparison shopping site that launched in 2009, dedicated to bargain hunters on the Internet and was recognized in the New York Times and on CBS New York. More recently, a new entrant called Centzy launched a website that combines both local search and comparison shopping functionality. Centzy's CEO used to work at SnapFish and is currently seeking funding following its successful launch for New York and San Francisco. Unlike Yelp, Centzy integrates pricing information for goods and services on its site so that users can comparison shop for local

² Rich Skrenta (co-founder and CEO of Blekko), "Blekko's not afraid of Google, why is Washington?", Skrentablog, September 20, 2011, http://www.skrenta.com/2011/09/blekkos_not_afraid_of_google_w.html.

³ Compete.com, September 2011 Site Analytics Data for The New York Times, accessed October 27, 2011, <http://siteanalytics.compete.com/nytimes.com/>.

⁴ Compete.com, September 2011 Site Analytics Data for Comedy Central, accessed October 27, 2011, <http://siteanalytics.compete.com/comedycentral.com/>.

⁵ MG Siegler, "Why So Siri-ous?", TechCrunch, October 16, 2011, <http://techcrunch.com/2011/10/16/iphone-siri/>.

⁶ Eric Jackson, "Why Siri Is a Google Killer", Forbes, October 28, 2011, <http://www.forbes.com/sites/ericjackson/2011/10/28/why-siri-is-a-google-killer/2/>.

services. Barefootfloors.com is a comparison shopping site that launched in January that is focused on home goods and “is now helping online shoppers to educate themselves on everything related to the home and to save money on a wide variety of products for the home.”⁷ In February of this year, the travel comparison shopping site, Hipmunk, received \$4.6 million in venture funding, even as Google continues to expand its own flight search and hotel search functionality.

These are just a few of the many recent entrants in local and comparison shopping that are entering the market even as Google continues to innovate. While they may not all succeed, venture capitalists and entrepreneurs alike continue to believe they can compete with Google, Yelp, Nextag, and other established competitors.

c. If your answer is that Ms. Mayer did not accurately describe Google’s policy, why did Ms. Mayer say it was in 2007? And what is Google’s policy?

As described above in response to Questions 1a and 1b, I do not believe that Ms. Mayer’s quote was inaccurate.

d. Google’s recently announced its plans to purchase the restaurant review service Zagat. Does Google intend to place Zagat’s results ahead of Yelp, OpenTable, or other sites that currently compete with Zagat’s?

Google wants to provide users with high-quality information about local businesses. Zagat provides survey-based aggregate ratings of businesses and curated user reviews. Acquiring Zagat is part of our efforts to ensure that we can provide high-quality information about and ratings of local businesses.

After acquiring Zagat, we are likely to include Zagat ratings in Google’s local results in some way, but we have not yet determined exactly how. Nonetheless, we will continue to rely on our user feedback and testing to provide guidance about how Zagat can enhance the answers we provide our users.

e. How do you respond to Mr. Stoppelman’s charge that he would not start Yelp today given Google’s practice of putting its local search at or near the top of search results and as a result taking so much “real estate” on the search results page? How can a new start up expect to compete with Google’s own content in search results?

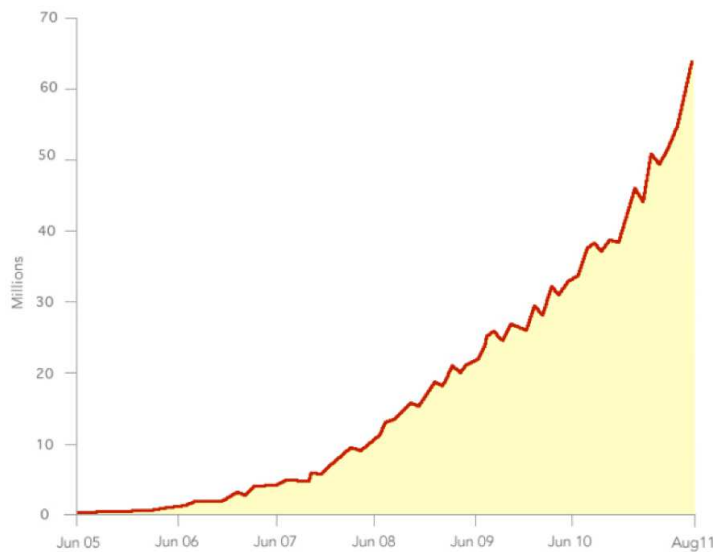
Yelp has many means of promoting its service, including advertising, promotion, and mobile apps. I would note that Mr. Stoppelman, when previously asked about Yelp’s competitors, said “I worry about neither [Google nor Groupon].”⁸

Despite Mr. Stoppelman’s statement, Yelp’s continuing growth demonstrates that new web services have many means of attracting users. This chart, from Yelp’s own web site, illustrates how Yelp has continued to thrive during the period covering Yelp’s complaints:⁹

⁷ Tanya Tymoshuk, “BarefootFloor.com: New Price Comparison Engine Helps Consumers Shop Smartly for Home Goods”, Yahoo! News, January 11, 2011, <http://news.yahoo.com/barefootfloor-com-price-comparison-engine-helps-consumers-shop-20110111-070000-289.html>.

⁸ Jeremy Stoppelman, “Interview at TechCrunch Disrupt SF 2011”, September 13, 2011, <http://www.ustream.tv/recorded/17252745> (“I worry about neither [Google nor Groupon]... We’re doing something that is very unique... Google doesn’t have the content. They just have people starting web searches... We actually have people that are coming to our site everyday that are saying, ‘I trust you to steer me to the right business.’ I think that’s a very special place to be.”).

More Than 63 Million Monthly Visitors



What I can comment on is that the Internet remains a very vibrant and innovative space. As I noted earlier, we do not have to speculate as to whether there are new entrants in vertical search services such as local search and comparison shopping sites. There are new entrants in these market segments all the time. A new comparison shopping site, FindTheBest, launched by the co-founder of DoubleClick last year, just raised \$6 million in venture funding over the summer. Cheapism is a comparison shopping site that launched in 2009, dedicated to bargain hunters on the Internet and was recognized in the New York Times and on CBS New York. More recently, a new entrant called Centzy launched a website that combines both local search and comparison shopping functionality. Centzy's CEO used to work at SnapFish and is currently seeking funding following its successful launch for New York and San Francisco. Unlike Yelp, Centzy integrates pricing information for goods and services on its site so that users can comparison shop for local services. Barefootfloors.com is a comparison shopping site that launched in January that is focused on home goods and "is now helping online shoppers to educate themselves on everything related to the home and to save money on a wide variety of products for the home."¹⁰ In February of this year, the travel comparison shopping site, Hipmunk, received \$4.6 million in venture funding, even as Google continues to expand its own flight search and hotel search functionality.

These are just a few of the many recent entrants in local and comparison shopping that are entering the market even as Google continues to innovate. While they may not all succeed, venture capitalists and entrepreneurs alike continue to believe they can compete with Google, Yelp, Nextag, and other established competitors.

- 2. Have you put in place any safeguards at Google to insure search results do not favor Google products and services merely because they are owned by Google? If so, what are they, and if not, why not?**

⁹ Yelp, "An Introduction to Yelp: Metrics as of August 2011", accessed on November 1, 2011, http://www.yelp.com/html/pdf/Snapshot_August_2011_en_US.pdf.

¹⁰ Tanya Tymoshuk, "BarefootFloor.com: New Price Comparison Engine Helps Consumers Shop Smartly for Home Goods", Yahoo! News, January 11, 2011, <http://news.yahoo.com/barefootfloor-com-price-comparison-engine-helps-consumers-shop-20110111-070000-289.html>.

As mentioned in Question 1a, universal 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 universal search results *are* our search service—they are not some separate “Google product or service” that can be “favored.”

The fundamental openness of the Internet places powerful competitive pressure on Google to ensure that our search results are those that are most responsive to what users are looking for. As Microsoft researcher Ryen White observed this year in summarizing his research findings, “The barrier to switching Web Search engines is low and multiple engine usage is common.”¹¹ There are even sites that allow Internet users to simultaneously compare Google’s results against those of our competitors. If Google stops delivering the most relevant results to users, they can and will switch away. That is what we mean by competition being “one click away,” and it is that reality that drives Google’s constant effort to improve the results we deliver to users.

- 3. At the hearing, you argued that Google now seeks to provide consumers with the best answers, not just links to websites with the answers. While we understand your desire to provide answers and not just links, why are the answers always provided by Google products and services rather than any other website? And, if you contend that your products and services are “better,” please provide with any objective criteria or consumer studies you believe demonstrate this contention?**

As I noted in my response to Question 1a, oneboxes are displayed when Google believes it is likely that a user is seeking a specific answer, and they often contain information or data that are licensed from third parties. And as also noted previously, universal search results are not separate “Google products and services” distinct from Google’s search results. Rather, as I said in response to Question 1a, these *are* Google’s search results. Thematic search results for particular types of content (video, images, news articles, products, and so on) are incorporated when our consumer testing and data analysis shows that those results algorithms are most likely to deliver the results sought by our users. This analysis is reinforced by research conducted by Microsoft, which indicates that 58% of heavy users want to complete tasks inside the search engine.¹²

- 4. At the hearing, you stated that as opposed to merely providing links to websites, “there’s a category of queries which are not well served by the 10 links answer.” Please list all such categories of searches for which Google believes the search is either not “well served by the 10 links answer” or in which Google modifies search results to provide a “one box” or presumed superior answer to the search.**

Google currently provides specialized search results or onebox answers for the following types of queries: videos, images, products, news, maps, books, local businesses, flights, finance, sports scores, weather, math results, among others.

¹¹ Qi Guo, Ryen W. White, Yunqiao Zhang, Blake Anderson, and Susan T. Dumais, “Why Searchers Switch: Understanding and Predicting Engine Switching Rationales,” SIGIR 2011, July 24-28, 2011, <http://research.microsoft.com/en-us/um/people/ryenw/papers/GuoSIGIR2011.pdf>.

¹² Robert Andrews, “Interview: Microsoft’s ‘Not Walking Away From Search’”, paidContent.org, August 2, 2011, <http://m.paidcontent.org/article/419-interview-microsofts-not-walking-away-from-search/> (interviewing Stefan Weitz, Microsoft Bing’s Director).

5. In 1998 at the same time they were founding Google, its co-founders Larry Page and Sergey Brin wrote a thesis at Stanford University which addressed search engine bias. They wrote that

[Search] bias is much more insidious than advertising, because it is not clear who ‘deserves’ to be there, and who is willing to pay money to be listed...For example, a search engine could add a small factor to search results from ‘friendly’ companies, and subtract a factor from results from competitors. This type of bias is very difficult to detect but could still have a significant effect on the market.

They added that they expected that advertising-funded search engines “will be inherently biased towards advertisers and away from the needs of consumers.”

Do you disagree with their view then that search engine bias is “insidious” and “difficult to detect”? Or that advertising funded search engines are “inherently biased”?

Larry and Sergey’s thesis, which was written 13 years ago, addressed industry practices prevailing at that time. During the time they were students at Stanford, most search engines operated under a “paid inclusion” model. Specifically, search engines like Yahoo! integrated paid advertising among the conventional search results without labeling them as ads. This practice continued to be sufficiently prevalent that it was the subject of a complaint filed with the Federal Trade Commission in 2001 that named eight search engine companies as engaging in this practice, including Lycos, MSN.com, Altavista, and HotBot. Google was not among the companies accused of engaging in this practice.

Many websites today continue to use this kind of “pay to play” placement model, including sites that have complained about Google (for example, Nextag and Foundem). Obviously, those sites may pursue such a business model, but one of Google’s founding principles has been that advertiser payment should not affect advertiser’s search result rankings.

Google recognizes the importance of advertising to the search business, but we believe that ads should always be clearly labeled. Indeed, paid inclusion in search results—without labeling—was the subject of Larry and Sergey’s thesis. In our opinion, advertisements and natural results both serve to create a positive user experience. This is similar to a well-run newspaper, where the advertisements are clear and the articles are not influenced by the advertisers’ payments.

6. **At the hearing, in answering my question as to whether Google had an incentive to favor its own products and services in search results because in doing so it would be behaving as we would expect as a rational business would to maximize its profits, you replied that "I'm not sure Google is a rational business trying to maximize its own profits." Is it really your position that Google does not conduct itself as rational business trying to maximize its profits? If so, can you point to any SEC disclosure which supports this view?**

As we stated in our 2004 IPO letter, “Google is not a conventional company.”¹³ From the very beginning, we have sought to protect Google's ability to innovate because we were confident that, in the long run, this would benefit Google and our shareholders. Indeed, we told our potential shareholders in 2004 that in pursuing our goal of “developing services that significantly improve the lives of as many people as possible, . . . we may do things . . . even if the near term financial returns are not obvious.”

¹³ Larry Page and Sergey Brin, 2004 Founders’ Letter, August 18, 2004, <http://investor.google.com/corporate/2004/ipo-founders-letter.html>.

We often work on projects that do not have an immediate revenue model, e.g., Google Translate, because we anticipate that they will ultimately contribute to a positive user experience, which will maximize the company's returns in the long run. As we stated in the 2004 IPO letter, "if opportunities arise that might cause us to sacrifice short term results but are in the best long-term interest of our shareholders, we will take those opportunities." Thus, Google sometimes foregoes short-term profits in order to provide users with the best experience in the belief that such a strategy will benefit our shareholders in the long run.

- 7. Google has argued that one cannot merely examine Google's market share as a search engine in determining whether it is a dominant firm, because it allegedly competes with Facebook and, further, that consumers can go directly to websites.**
 - a. As to Facebook, it is primarily a social-networking site and its Internet Search is powered by Bing. In other words, to search the Internet on Facebook, one must use Bing. So Facebook is not an additional competitor for Internet search beyond Bing, isn't that correct?**

That is not correct. Social networks have become a significant, potentially game-changing competitor. When consumers search for information online, they are looking for answers to their questions. Google seeks to provide answers to users' queries, and social networking sites like Facebook and Twitter also allow users to leverage their social networks to find answers to their questions. Google is therefore competing with all methods available to access information on the Internet, not just other general search engines. The source of Facebook's competition with Google is not only through using Bing to search the Internet but, also, by offering users a fundamentally different way to discover and connect with information on the Internet.

Consumers have a lot of options for accessing information, and recent statistics show that they are using them. Users can use general search engines and, at the same time or in lieu of online search, they can use social search to access information. The Internet is a robust and dynamic environment where new modes of thinking and technological innovation are constantly changing the way we view the competitive marketplace.

Outside experts agree with this assessment. One tech analyst explained that "the nascent search behaviors we see developing on Facebook right now suggest it not only has the potential to become a viable search engine, but in fact has a chance to help redefine the way we currently think of search."¹⁴ Another noted that Facebook's "treasure trove of distinctive data . . . could put Google out of business."¹⁵ Facebook agrees as well; an executive recently said that search in its current form "just didn't work," and it would have to "go social."¹⁶

¹⁴ Eli Goodman, "What History Tells Us About Facebook's Potential as a Search Engine," comScore Voices Blog, June 3, 2010, http://blog.comscore.com/2010/06/facebook_search_engine.html.

¹⁵ Ben Elowitz, "How Facebook Can Put Google Out of Business," TechCrunch, June 3, 2011, <http://techcrunch.com/2011/06/03/facebook-google-out-of-business/>.

¹⁶ Emma Barnett, "Google and other search engines are "failing" says top Facebook executive," The Telegraph, October 25, 2011, <http://www.telegraph.co.uk/technology/facebook/8846314/Google-and-other-search-engines-are-failing-says-top-Facebook-executive.html> (quoting Ethan Beard, Director of the Facebook Platform).

Some sites already get a significant portion of their traffic from social networks. Comedy Central gets almost one-third of its visits from Facebook and only 15% from Google.¹⁷ Twenty-four percent of Twitter's traffic comes from Facebook, and only 10% comes from Google.¹⁸

- b. In September 2010, you were quoted as saying, referring to Facebook and Apple, "We consider neither to be a competitive threat . . . our competitor is Bing." Do you stand by that quote, or do you contend that Google does compete with Facebook? If the latter, why were your views different in September 2010?**

As I noted this past June, my statement last September was clearly wrong.¹⁹ The Internet is dynamic and has changed significantly. The importance of social networking to consumers' online experience has changed remarkably—even over the past year. Consumers are looking for answers when they conduct searches online, and social search has become a serious competitor in helping people find those answers online. Similarly, Apple's Siri is a significant development—a voice-activated means of accessing answers through iPhones that demonstrates the innovations in search. The tech 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 and we sometimes fail to anticipate the competitive threat posed by new methods of accessing information. We compete against a broader array of companies than most people realize, including general search engines (Microsoft's Bing, Yahoo!), specialized search engines (Kayak, Amazon, WebMD, eBay), social networks (Facebook, Twitter), commercial software companies (Apple, Microsoft), mobile apps, and even direct navigation. The Internet is incredibly competitive, and new forms of accessing information are being utilized every day.

- c. Doesn't the fact that survey data shows that 92% of adults use search engines to find information on the Internet belie the contention that Google competes with other websites that are not search engines?**

Having not seen this study, I cannot speak directly to the statistic mentioned. This survey data, however, does not seem to indicate that consumers that use search engines do not also use other means of finding information on the Internet. For example, a consumer looking for a restaurant could start a Google search. But increasingly consumers might, instead or in addition, ask their friends on Facebook or Twitter for restaurant recommendations, or search their Yelp mobile application for restaurants. Users have a plethora of options to access information on the Internet, including general and specialized search engines, mobile apps, and social networks. They can use all of these methods, including search, to find answers to their questions.

Indeed, surveys have shown that users resort to various methods to access information online. Consumers have driven the demand for these multiple access points and Google competes vigorously with all of the other methods for accessing information over the Internet. As David Balto, the former policy director of the Federal Trade Commission, recently observed:

¹⁷ Compete.com, September 2011 Site Analytics Data for Comedy Central, accessed October 27, 2011, <http://siteanalytics.compete.com/comedycentral.com/>.

¹⁸ Compete.com, September 2011 Site Analytics Data for Twitter, accessed October 27, 2011 <http://siteanalytics.compete.com/twitter.com/>.

¹⁹ As I mentioned during the D9: All Things Digital Conference this past June, people want to know what their friends are interested in. This is just as true in the online world as it is in the physical one. See Geoffrey Fowler and Ian Sherr, "Google Missed the 'Friend Thing'", The Wall Street Journal, June 1, 2011, <http://online.wsj.com/article/SB10001424052702303745304576358343688967086.html>.

Google has consistently led the industry in innovations, and has played an important role in the evolution of search. But complacency would lead to certain obscurity. Websites such as Facebook, Amazon, eBay, Expedia, and Wikipedia all aggregate and organize information, steering users away from traditional search providers such as Google, Bing and Yahoo. Facebook is a particularly dangerous threat to the traditional search providers because it not only takes traffic away from Google, Bing, and Yahoo, but it also a growing source of redirected traffic for original content providers.²⁰

8. **Millions of consumers now search the Internet using mobile devices like smartphones rather than on their computers. According to a leading industry expert, by 2014 the number of users accessing the Internet through mobile devices will exceed those doing so through desktop computers. Google's Android phones are now the most popular smartphones, with a 40% market share and growing. And just a few weeks ago Google announced it was purchasing Motorola, a major smartphone manufacturer.**

Your critics fear that Google could demand from phone manufacturers that Google be made the default search engine for all Android smartphones, and in that way lock in your dominance on mobile devices. This is very similar to the tactic that Microsoft used in the 1990s when it demanded that computer manufacturers install Internet Explorer as the default web browser as a condition of using the Windows computer operating system.

- a. **Has Google demanded that smartphone manufacturers make Google the default search engine as a condition of using the Android operating system? Will you pledge that Google will not do this in the future?**

Google does not demand that smartphone manufacturers make Google the default search engine as a condition of using the Android operating system. Android is a free, open source platform for mobile devices. The complete Android source code is available for download for free from the Android Open Source Project website.²¹ Any developer or manufacturer can use, modify, and distribute the Android operating system without Google's permission or any payment to Google. For example, Amazon recently announced the Kindle Fire—its new tablet device—using the Android source code without Google's involvement. This is one of the exciting and innovative aspects of Android that will help foster innovation and competition in the smartphone market.

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 access to or use of Android on pre-installation of any Google applications or on making Google the default search engine.

Manufacturers can choose to pre-install Google applications on Android devices, but they can also choose to pre-install competing search applications like Yahoo! and Microsoft's Bing. Many Android devices have pre-installed the Microsoft Bing and Yahoo! search applications. No matter which applications come pre-installed, the user can easily download Yahoo!, Microsoft's Bing, and Google applications for free from the

²⁰ David Balto, "Internet Search Competition: Where is the Beef?", June 23, 2011, <http://www.dcantitrustlaw.com/assets/content/documents/googlesearchfinal-Balto.pdf>.

²¹ See Android Open Source Project, "Downloading the Source Tree", accessed on November 1, 2011, <http://source.android.com/source/downloading.html>.

Android Market.²² In addition, Android gives manufacturers the freedom to pre-install third-party app stores, like the Amazon Appstore for Android, where a user can download a variety of apps, including Microsoft's Bing.²³

- b. New York magazine reports that an email from one of your executives, Dan Morrill, was disclosed in a lawsuit. In this email, Mr. Morrill suggested that Google was using compatibility with Android “as a club to make [phone manufacturers] do things we want.” Could you explain what he meant? Further, if the Department of Justice decides not to block Google’s proposed acquisition of Motorola Mobility, will Google commit not to use the patents it acquires through that acquisition “as a club” against other companies in the mobile space? Specifically, will Google commit to license these patents to competitors and others on reasonable and non-discriminatory terms?**

As to the New York Magazine article, Mr. Morrill’s remarks reviewed in their full context express 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 Compatibility Definition Document (“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.

One of the most significant benefits of Android is that it is free. This has significantly reduced Android device costs and has helped drive down handset prices across the wireless industry.²⁴ But Android and our

²² Users can access the Microsoft Bing Search application here: https://market.android.com/details?id=com.microsoft.bing&feature=search_result; the Yahoo! Search application here: https://market.android.com/details?id=com.yahoo.mobile.client.android.yahoo&feature=search_result; and the Google Search application here: https://market.android.com/details?id=com.google.android.googlequicksearchbox&feature=search_result.

²³ Amazon makes the Microsoft Bing Search application available here: <http://www.amazon.com/Microsoft-Corporation-Bing/dp/B004T54Y2M/>

partners have recently come under significant fire by firms attempting to use patent infringement suits to drive up the cost of Android phones and jeopardize the Android platform. Google's intent in acquiring Motorola Mobility is to provide a defense against these suits. Google hopes that Motorola Mobility's patent portfolio will deter other companies from suing to limit the distribution of Android or from attempting to burden it with unreasonable licensing fees.

- 9. Prior to its acquisition of ITA, Google gave several assurances that Online Travel Agencies (OTAs) would be included in its flight search products. Google's statements included the following:**

The "acquisition will benefit passengers, airlines and online travel agencies by making it easier for users to comparison shop for flights and airfares and by driving more potential customers to airlines' and online travel agencies' websites."

"Our goal is to build tools that drive more traffic to airline and online travel agency sites where customers can purchase tickets."

"Google does not plan to sell airline tickets directly; our goal is to build a tool that drives more traffic to airline and online travel agency sites where customers can purchase tickets."

It is my understanding that Google's new Flight Search tool shows a list of flights and links only to airlines where flights can be booked; there are no links to online travel agencies. How is this consistent with Google's promises that the ITA acquisition would drive more traffic to online travel agencies? Why is there no link to OTAs on Google's new Flight Search tool? Is this because Google now competes with OTAs for advertising revenues?

We're excited about the initial positive reaction to our new flight search tools. But like any other partner, Google needs to honor the airline's distribution decisions. With the flight search feature, that means we continue to explore opportunities to showcase online travel agents ("OTAs") and metasearch firms further. In fact, Expedia CEO Dara Khosrowshahi recently observed, "We are happy to see OTA links at the bottom of the Google Flight result. . . ."²⁵

The ITA transaction was approved by the Department of Justice with conditions that are incorporated into a consent decree. Google has carefully adhered to the decree.

- 10. Various companies that offer consumer reviews such as our witness Yelp have accused Google "scraping" its user reviews of restaurants, hotels and other services, and using these reviews on the Google own "places" page, which also contains reviews. Yelp testify at the hearing that Google was doing this without Yelp's permission, and instead offered them a Hobson's choice of Yelp allowing this practice, or Yelp's website would not be listed on Google search results. This past summer, Google changed this practice and ceased**

²⁴ Dan Nystedt, "They're Here: Cheap Android Smartphones", PC World, February 26, 2010, http://www.pcworld.com/article/190271/theyre_here Cheap_android_smartphones.html ("A new group of companies, electronics contract manufacturers, are starting to make high-end mobile phones, including smartphones, for mobile network operators around the world, and these are companies adept at slashing prices.").

²⁵ Dennis Schaal, "Expedia Sees Hotel Improvements, But Still Admires Booking.com From Afar", Tnooz, October 28, 2011, <http://www.tnooz.com/2011/10/28/news/expedia-sees-hotel-improvements-but-still-admires-booking-com-from-afar/>.

including Yelp content in Google places pages. Why did Google change its policy this summer? Prior to the policy being changed, did Google use Yelp and other similar review sites content without their permission?

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.²⁶ 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,²⁷ or by accessing one of many publicly available robots.txt files.²⁸

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

²⁶ 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>.

²⁷ 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>.

²⁸ A non-comprehensive list of robots.txt files submitted by independent programmers is available here: <http://www.robotstxt.org/db.html>.

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.

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.”²⁹

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.com or any other site with just one click.

- 11. Vertical search companies, companies that help consumers search for a specific product or service – such as Nextag and the British product comparison site Foundem -- have complained they have been the subject of “search penalties” on the Google search engine. They allege that they are dropped down in the search rankings by these penalties by among other things, the fact that they have their own search functionality on their sites, and that they contain links to other sites. Allegedly, these search penalties occur whether or not these websites are popular with consumers.**
 - a. A web site that has search functionality and offer links to other sites resembles Google itself. What do you say to your critics who would argue that Google deliberately penalizes websites that resemble Google in order to defeat your competition and maintain your dominant share in search?**

We never take actions to hurt specific websites for competitive reasons. Our search quality and ad quality systems assess the quality of webpages and ads without regard to whether a site competes with Google, only on the basis of what is most likely to be useful for consumers.

We rank search results to deliver the best answers to users. We built Google for consumers, not websites. To achieve this result, we consistently rank high-quality sites with original content in the highest position regardless of whether they compete with Google. While we understand that there is no objective right answer to most search queries and that the answer is a “scientific opinion,” we also recognize that if we do not give users the best possible search results, they are likely to click away to one of our competitors. This necessarily means that not every website can come out on top, or even appear on the first page of our results, so there will almost always be website owners who are unhappy about their rankings. The most important thing is that we satisfy our users.

²⁹ 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/>.

b. Do you deny that Google has the ability to manually alter the ranking of websites in its search results?

Ideally, we would never have to manually intervene with the search results returned by our algorithms. Search, however, is still in its infancy, and our algorithms are still learning how to rank certain types of results. There are a few, limited instances in which we may utilize manual controls—spam, security, legal requirements (copyright, child pornography), and exception lists for results that are improperly excluded by the algorithms. However, we do not manually elevate specific sites in the search results.

When we manually intervene in our conventional search rankings, we do so to enhance the general user experience. As many Internet users are aware, the worldwide web contains many poor quality sites that range from annoying (webspam) to destructive (malware). Without manual intervention, unwitting users might accidentally access such a site through a Google search result. Rather than finding the answers they seek, these users will instead have their search derailed or, much worse, their computer infected. Similarly, displaying content from certain websites can violate the law. Finally, Google's algorithms are not infallible. To account for this, we use exception lists to reintegrate results that should not have been removed by the algorithms from the search results.

I should also note that this is standard industry procedure. Microsoft's Bing, Yahoo!, and other search engines have acknowledged that they also utilize manual controls.³⁰

12. Google has stated that consumers prefer to go to sites offering products directly for sale rather than product comparison sites like Nextag that compare prices, offer product reviews, and themselves contain links to retailers. Does Google sell products on its Shopping results page or does it provide links to websites that sell the product? And, please provide the factual basis for this assertion, including the results of any consumer studies that support this assertion.

Google does not sell merchandise through Google product search. Rather, we provide links to merchants who sell merchandise. These links can include inventory and price information provided by those merchants via a dynamic feed. More than 200,000 merchants participate in this program, providing us with information for more than one billion products.

Google product search results can float within the search results page, based on our assessment of the nature of the user's search. Search is about answers, and we have found that when a user submits a query about a specific product, there is a high probability that he expects to see shopping results. This expectation has been validated by our testing process, which is driven by user feedback. For example, a few years ago, we started thinking that when our users search for products, like [sony digital camera prices], they would likely find shopping results useful. So we conducted a test with our user raters, and asked them whether they preferred a results page with shopping results, or without. Users overwhelmingly preferred the page with shopping results. This is consistent with research conducted by Microsoft indicating that 58% of heavy users want to

³⁰ See e.g., "How Bing Delivers Search Results", Microsoft Bing Help, accessed October 28, 2011, <http://onlinehelp.microsoft.com/en-us/bing/ff808447.aspx>. ("In limited cases, to comply with applicable laws and/or to address public policy concerns such as privacy, intellectual property protection, and the protection of children, we might remove particular resources from the index of available information. In each case where we are required to do so by law, we try to limit our removal of search results to a narrow set of circumstances so as to comply with applicable law but not to overly restrict access of Bing users to relevant information.")

complete tasks inside the search engine.³¹ Further, our own research conducted through user studies, independent rater evaluations, and click data consistently show that consumers like a mixture of retailer, review, and manufacturer sites like Amazon.com, CNET, or Sony.

In addition, in the course of our testing process, Google has found that users prefer results that are distinct and diversified. Users do not want sites that provide duplicative and unoriginal content. Google's search results provide consumers with product prices from different merchants so that our users can make the most informed decision about the products they want to purchase. Our rankings are driven by consumer signals about what sites they find useful. Consumers can easily switch from Google to a competing site if they disagree with our rankings or believe we are not providing the best possible results.

13. Please explain why Google Shopping results appear near the top of Google search results when users enter a query for consumer products, and why, as alleged by Nextag, other product comparison sites are not generally placed in the same favorable position.

Search is about answers, and we have found that when a user submits a query about a specific product, there is a high probability that he wants to go directly to a page featuring detailed information about the product, including where it can be purchased and at what price. This expectation has been validated by our testing process, which is driven by user feedback. For example, a few years ago, we started thinking that when our users search for products, like [sony digital camera prices], they would likely find shopping results of this kind useful. So we conducted a test with our user raters, and asked them whether they preferred a results page with shopping results, or without. Users overwhelmingly preferred the page with shopping results. This is consistent with research conducted by Microsoft indicating that 58% of heavy users want to complete tasks inside the search engine.³²

That said, it would not be accurate to suggest that Google product search results are always displayed at the top of the search results page. Thematic search results may be displayed at the top, middle, or bottom of the search results page—or may not be displayed at all—based on our assessment of the likelihood that the user wants shopping results of this kind. Notably, Google is significantly more conservative in deciding whether to trigger thematic search results than some of our competitors. Bing, for example, triggers thematic results within its search results approximately 50% more frequently than Google does.

14. Please explain why the Google “Places” listing for local searches such restaurants, hotels, and other local products and services are typically placed in the first Google results page, near the top of the results, but without any designation that the “Places” results is a Google product and not an organic search result? How can a consumer be expected to know this is a Google product, not an organic search result? Would Google agree to label its “Places” listing as a Google product, and set it off with a different color background?

As explained previously, thematic search results (such as Places) incorporated in universal 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. These universal search results *are* our search service—they are not some separate “Google product” that can be “favored.”

³¹ Robert Andrews, “Interview: Microsoft’s ‘Not Walking Away From Search’”, paidContent.org, August 2, 2011, <http://m.paidcontent.org/article/419-interview-microsofts-not-walking-away-from-search/> (interviewing Stefan Weitz, Microsoft Bing’s Director).

³² Robert Andrews, “Interview: Microsoft’s ‘Not Walking Away From Search’”, paidContent.org, August 2, 2011, <http://m.paidcontent.org/article/419-interview-microsofts-not-walking-away-from-search/> (interviewing Stefan Weitz, Microsoft Bing’s Director).

Depending on the search query, Google may either group local results together, or may distribute local results throughout our search results. Either way, Google is simply trying to organize and display local business results so as to save users time by displaying local information in the most effective manner, in order to eliminate the need to conduct multiple searches. As with any of Google's search results, local business listings are ranked according to likely relevance. For example, typing in a query for [shoe repair 22203] will typically return local business listings organized by geographic proximity to that zip code. The ranking of local business results is not affected by payment.

We are always assessing how we can provide a better service to our users and are always open to suggestions about how to improve the user experience.

- 15. How is it determined which establishments are listed in the Google Places listing, and in which order? Is a different method used than used for ordering in Google organic search results, and if so how is it different? Does advertising or a commercial relationship with Google play any role in which businesses are listed in Google Places, and in which order?**

Please see answer above. Advertising or commercial relationships are irrelevant with respect to what order business listings are displayed in search results.

- 16. At the hearing, you stated several times that because Google is in the business of ranking, when one website's ranking goes up, another's necessarily has to go down. But competition concerns arise when Google consistently ranks its *own* websites (such as shopping, local search, maps, etc.) in the top few search results, pushing competing websites down. Such a strategy seems to financially benefit Google in two ways: (1) Google captures advertising revenue by keeping users on its own websites rather than its competitors'; and (2) in order to be found by consumers, companies who are pushed further down the screen or onto subsequent search results pages need to invest more in advertising in order to show up in a prominent place on Google's search results page. Do you agree that Google financially benefits when competitors' websites are found further down the search results page?**

Google benefits financially in the long term when we help users find the information they are looking for. Consumers can easily compare the results they get from Google with information provided by other websites. If we do not do a good job of connecting users to the information they seek, they can and will look elsewhere. It is not in our interest to frustrate our users by making it more difficult to find information they want.

- 17. At the hearing in answer to a question from Senator Klobuchar, you were asked about Google's participation in advertising auctions. You said that Google participates in auctions, but that you limit your participation for "obvious reasons." Can you explain those reasons? And, if the concerns about your participation are obvious, why do you participate in them even in a limited way?**

Online marketing is a great tool by which we can connect with users; therefore, we sometimes use AdWords to promote our own products and new product features ("house ads"). On rare occasions, Google also uses AdWords to provide information to our users on specific issues of public interest, e.g., ongoing crises or disasters such as earthquakes. Google's house ads may appear on Google sites and on AdSense for Search and AdSense for Content partner sites.

Google's participation in AdWords auctions is commercially appropriate, but we have limited our participation as follows. Google has established an internal review committee that monitors our compliance with house ad policies and processes. First, Google's house ads are not guaranteed to display in any given

position. Second, our house ads must comply with the same advertising policies that apply to any other AdWords advertiser. Third, only quality ads that are directly relevant to a user's query will appear (based on the same criteria applicable to all other AdWords advertisers). Thus, when Google's house ads are triggered, it is because Google is acting as any other rational advertiser would.

It is also important to note that Google's participation in an auction has no impact on the price paid by external advertisers. The AdWords system has been set up so that advertisers who compete with house ads in auctions pay as if the house ad were not participating in the auction.



**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**

Senator Mike Lee Questions for the Record for Eric Schmidt

1. Are Google products and services subject to the same search-ranking algorithmic process as all other organic search results?

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.”¹

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 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

¹ Danny Sullivan, “Being Search Boxed to Death”, Search Engine Watch, March 4, 2001, <http://searchenginewatch.com/article/2065235/Being-Search-Boxed-To-Death>.

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.

2. Does the algorithm used to produce organic search results place a Google product or service higher than it would an identical page owned by another business?

As mentioned in response to Question 1, we view our thematic search results as part of our search results, not as a separate product or service. With respect to a page on a Google-owned site such as YouTube that is crawled and ranked within our search results, such a page is not placed higher because it is on a site owned by Google than an identical page would be if it were owned by another business.

3. Does Google favor sites that display Google AdSense advertisements in its natural or organic search results?

Google does not give preference to sites that advertise with Google, via our AdWords program, or to sites that accept Google ads via our AdSense program. Ranking in natural search results is not affected by payment or financial benefit to Google.

4. You will recall that during the hearing I displayed and described to you results of a study that compared Google's search rankings of three popular price comparison sites with the search ranking for Google Shopping results (displayed as a "OneBox" result using "Universal Search").

In response to evidence that Google consistently ranks and displays Google Shopping results higher than competing price comparison sites, you responded that it was "an apples to oranges comparison" because the Google Shopping results are "answers" that take users directly to the websites of companies that sell the product in question.

a. On September 28, 2011, a search query on Google for "UK product search" returned Google Product Search as the first result, described as "Google's UK price comparison service." Is Google Product Search a price comparison service?

Google product search is a type of thematic search that allows consumers to compare prices and see which websites are selling a particular product.

b. Does Google Product Search compete with other price comparison services?

As mentioned in response to Question 1, we view our thematic search results as part of our search results, not as a separate Google product or service. Google's search service competes with stand-alone price comparison services to provide consumers with relevant product-related information, and also competes with other websites, such as Amazon and eBay, as well as competing search engines, such as Microsoft's Bing and Yahoo!, that include comparative product information.

c. The Google 2009 Annual Report reads, in part, as follows:

We face competition from [v]ertical search engines and e-commerce sites, such as WebMD (for health queries), Kayak (travel queries), Monster.com (job queries), and Amazon.com and eBay (commerce). We compete with these sites because they, like us, are trying to attract users to their web sites to search for product or service information, and some users will navigate directly to those sites rather than go through Google.

Does Google compete with vertical search engines?

Yes. Google competes with all of the methods for accessing information on the Internet. Users seek answers to their questions, and Google, along with specialized search engines, social networks, mobile apps, and other websites, is competing to provide users with the most relevant information available. Unlike technologies of the past, on the Internet competition is one click away. The history of the technology industry shows that technologies often get supplanted by completely new models, thus creating a robust and competitive market within which consumer demand drives innovation. For many commentators, specialized search services operate according to this new model with which Google will now have to compete. As Jeffrey Rayport from Businessweek observed,

Google's . . . real threat is not from such Goliaths as Microsoft, but from a myriad of Davids—specialized search engines tailored to conduct “vertical” search tasks. Examples of these include restaurant reservations by OpenTable . . . job hunting at Simply Hired, and online travel with sites like Orbitz . . . and Priceline These sites are not promoted explicitly as “search engines,” but that’s what they are; they also happen to execute transactions.²

You do not have to take Google's word for it, either. Every one of the companies that Google lists as a competitor in its 10-K, including Amazon, WebMD, Monster, and eBay also list Google or search engines generally as their competitors.³ Unfortunately, the conventional general search query share figures released by comScore and Hitwise do not reflect the reality that Google competes against all of these specialized sites, plus social networks, mobile apps, and now voice-activated search like Apple's Siri when it comes to accessing information.

d. Is the information displayed when a user clicks on a Google Shopping result often similar to the information provided by competing price comparison sites?

Google believes that our shopping results are more comprehensive and current than most comparison shopping sites. In addition to crawled content, we have direct feeds that allow more than 200,000 online

² Jeffrey F. Rayport, “Google's Search Gold Mine Could Tap Out”, Bloomberg Businessweek, February 13, 2011, http://www.businessweek.com/technology/content/feb2011/tc20110211_680322.htm.

³ See e.g., Amazon 2010 10-K, WebMD Health Corp. 2010 10-K, Monster Worldwide, Inc. 2010 10-K, and eBay 2010 10-K at <http://www.sec.gov/edgar/searchedgar/companysearch.html>. Kayak is not publicly owned and therefore does not file 10-K forms with the Securities and Exchange Commission.

merchants to publicize their inventory and prices—in real time—to interested shoppers searching Google. Currently, more than one billion products are available for sale through these partners' websites.

- e. Does Google display Google Shopping results within its natural search results without any label identifying them as Google results or as otherwise distinct from true “search results”?**

As stated in my response to Question 1, universal search results are *not* separate “products and services;” they *are* our “true” results.

- f. Does clicking on various links within a Google Shopping result take the user to another Google page and not always, as you suggested in your testimony, directly to the site of a company that sells the product in question?**

Depending on the specificity of the user's query, clicking on a shopping result will either take a user to a page where they can compare the prices of many different merchants, or directly to a merchant's site. For example, a search for a specific camera model might show shopping results that link directly to merchant sites, but a broader query like [sony digital camera] might yield broader shopping results that the user can then refine in order to find the product he wants.

- g. Is it possible that consumers consider competing price comparison sites as potential substitutes for Google Shopping results?**

As stated above, Google product search is a type of thematic search that allows consumers to compare prices and see which websites are selling a particular product. In that sense, Google product search competes with stand-alone price comparison services and also competes with other websites, such as Amazon and eBay, as well as competing search engines, such as Microsoft's Bing and Yahoo!, that include comparative product information.

- h. Is it possible that Google's practice of preferencing its own Google Shopping results may deprive competing price comparison sites of user traffic and thus decrease competition from such sites?**

As stated in my response to Question 1, universal search results that integrate conventional and thematic search results are not different “results.” The suggestion that Google “preferences” Google shopping results is thus based on an inaccurate premise.

Google was built to benefit users, not any website or group of websites. As I said above, our primary goal is to give users answers, and if, for any reason, we do not provide the best answers for our users, they can and will switch to another source of information. For example, users can go to websites by directly navigating to the website (i.e., entering the address in their browsers), through advertisements on other websites, through mobile apps, or through their social networks. Google does not prevent users from reaching other shopping comparison sites.

Consumer research has confirmed that users prefer the incorporation of thematic and conventional search results, which is why all of the largest general search engines today provide such blended results. In fact, an October 2010 analysis by comScore showed that Microsoft's Bing displays thematic results as part of its search results 54% of the time, while Google displays them 33% of the time.⁴ Indeed, as I mentioned in my

⁴ Eli Goodman, “Universal Search: Not All Blends Are Created Equal,” comScore Voices blog, October 26, 2010, http://blog.comscore.com/2010/10/universal_search.html.

answer to Question 1, general search engines have been providing such blended results since at least the late 1990s.

i. Do customers normally believe that the first few results are the most relevant?

While we have not surveyed customers' beliefs on this issue, we hope that the better job we do of providing useful and interesting information, the more they will find that information relevant and helpful.

We hope that we continue to improve our ability to discern user intent. We believe that we are able to provide superior search results because our ranking algorithms allow us to identify the most useful material and present it to the user first. We make over 500 changes to the algorithms every year to improve search and fight malicious websites. Search has become more than just providing links to relevant information; users want search engines to give them answers. Sometimes the best answer is a list of links, but sometimes it is a map, a stock quote, a sports score, or shopping results, which both Google and our competitors sometimes incorporate into search results to better serve consumers. As Microsoft's president of its online services division, Qi Lu, observed: "Search is a means to an end. We want our product to go substantially beyond just finding information, go all the way to help the user make decisions and complete tasks."⁵

5. You testified that you were "not sure Google is a rational business trying to maximize its own profits" in every respect. But more specifically, does Google have a financial incentive to preference its own secondary pages, many of which include advertisements that may generate revenue, above those of its competitors?

As we stated in our 2004 IPO letter, "Google is not a conventional company."⁶ From the very beginning, we have sought to protect Google's ability to innovate because we were confident that, in the long run, this would benefit Google and our shareholders. Indeed, we told our potential shareholders in 2004 that in pursuing our goal of "developing services that significantly improve the lives of as many people as possible, . . . we may do things . . . even if the near term financial returns are not obvious."

Google's financial incentive is to do a good job in connecting users to the information they seek, and thematic search results are intended to connect users to information they seek. Users can easily compare our search results with information available from other websites; and they can and will switch to other sources if we do a poor job. Google's thematic search results frequently contain extensive specific information of the kind understood to be sought by a user, such as natural links to merchants selling a particular product, or links to the site of a restaurant listed in a Places page; Google receives no revenue when a user clicks on one of these links.

6. When asked at the hearing whether Google's own services "are . . . subject to the same test, the same standard as all the other results" in Google's non-sponsored search results, you said, "I believe so. . . . I'm not aware of any unnecessary or strange boosts or biases." Please provide the Subcommittee with a direct, definitive, and precise answer to this question.

As mentioned in response to Question 1, we view our thematic search results as part of our search results, not as a separate product or service. With respect to a page on a Google-owned site such as YouTube that is

⁵ Qi Lu, Comments at Microsoft Financial Analyst Meeting, Anaheim, California, September 14, 2011, http://www.microsoft.com/investor/downloads/events/09142011_FAM_Qi.docx (downloads Word document).

⁶ Larry Page and Sergey Brin, 2004 Founders' Letter, August 18, 2004, <http://investor.google.com/corporate/2004/ipo-founders-letter.html>.

ranked within our search results, such a page does not appear higher on our search results page because it is on a site owned by Google than an identical page would be if it were owned by another company.

7. At the May 2007 Seattle Conference on Sustainability, Marissa Mayer stated the following:

[When] we roll[ed] out Google Finance, we did put the Google link first. It seems only fair, right? We do all the work for the search page and all these other things, so we do put it first . . . That has actually been our policy since then, because of Finance. So for Google Maps again, it's the first link.

Is this statement accurate?

It is my understanding that Ms. Mayer was referring to the placement of links within a onebox (but not the ranking of other thematic results within search results), and her description was accurate.

8. What has Google done to let its users know that its natural search algorithm gives preference to Google's own products and services?

As described in my response to Question 1 above, I believe that the premise of this question is incorrect.

9. Do you find anything problematic with respect to the way in which Google prioritizes the search rankings and enhances the display of its own products and services?

As I said in response to Question 1, 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 “prioritize” our “products and services” is based on an inaccurate premise. These universal search results *are* our search service—they are not some separate “Google product” that can be “prioritized.”

10. In April of this year, Google's Chief Financial Officer, Patrick Pichette, when asked on an investment community call to discuss Google's investment in its Chrome Browser, stated that “everybody that uses Chrome is a guaranteed locked-in user for us...” (See <http://www.zdnet.com/blog/btl/why-is-chrome-so-important-to-google-its-a-locked-in-user/47295>.)

a. Do you agree with Mr. Pichette's statement?

Mr. Pichette’s comment is not correct. Chrome users are not in any way “locked-in” for Google. Chrome users can easily change the browser’s default search engine to any competing search engine.⁷ It is as easy as selecting the “Preference” menu in Chrome and selecting your desired search engine from the drop-down menu. In addition, a user who downloads Chrome actually has to select the search engine he or she wants; Google is not set as the default.

On the other hand, Microsoft’s Internet Explorer—the web browser with the largest share of users (with a 40-50% market share)—includes Microsoft’s Bing as the default search engine, and we believe that it is cumbersome to switch to another search engine as the default.

⁷ See Chrome Help, Setting Your Default Search Engine, accessed November 1, 2011, <http://www.google.com/support/chrome/bin/answer.py?answer=95426>.

- b. Given your testimony at the hearing that Google lives by the principle of “loyalty, not lock in,” will Google commit to ensuring that its Chrome Browser, Toolbar, and other software applications make it easy for users to switch from the default Google search engine to other offerings?**

As described above, in response to Question 10a, Google already makes it easy for users to switch from Chrome and other software applications.

- 11. At IBM’s Business Partner Leadership Conference in 2008, you said: “If it’s not searchable by Google, it’s not open, and open is best for the consumer.” You have a long personal history as a leading advocate for open-source software and a reputation for creating and participating in open movements such as OpenSocial and the Open Handset Alliance.**

In your written testimony, you stated that “[a]t Google we believe that open is better than closed” and that “open sourcing software has real benefits in the marketplace.” You also said:

“Open” also means supporting features that have been approved by formal standards bodies, and, if none exist, working to create standards that improve the entire ecosystem. And “open” means releasing the source code to numerous projects that were developed by Google so that third parties can utilize these technologies to build their own products without having to reinvent the wheel, thereby speeding up the innovation cycle and providing consumers with even more choices.

It appears to some that Google’s “open” initiatives have centered on areas where Google lags behind competitors in a market. Conversely, many claim that Google seems to avoid open initiatives in areas where it is a market leader, as with Google Books, YouTube, and its own search index.

Some commentators, such as Danny Sullivan, editor-in-chief of Search Engine Land, advocate for Google’s participation in an open index project. This is an example of an area in which Google is a clear industry leader and could foster innovation and marketplace growth by allowing others access to its index, without requiring Google to reveal trade secrets such as its search algorithm. Will Google commit to lead a search-index open initiative?

I am not familiar with Mr. Sullivan’s proposed initiative. I do know that Google has made a number of our key innovations available as open source software, including Android (mobile operating system), WebM (video codec), Chromium (desktop/mobile OS), and Tesseract (optical character recognition software). We do not limit our open source projects to areas where we lag behind competitors. Google’s open source projects have spurred innovation and competition in several markets. Some of Google’s open source initiatives have been hailed as the most significant open source initiatives in the software industry.

- 12. There have been reports that Google has acted to obstruct access to some of its substantive content, preventing competing search engines from offering results that include a full index of that content. In the case of YouTube, rival search engines claim to have been granted access only to some of YouTube’s video content. Reports also suggest that Google attempted to settle litigation surrounding Google Books by signing an agreement that would give Google exclusive control over who may index its digitized copyrighted books. It would come as a surprise to many users that a company so vocal in its dedication to openness might be attempting to block some of its content from competitors. Will Google commit to**

ensure that other search engines may fully crawl and index all non-secure Google content, now and in the future?

Google has not restricted legitimate third-party search engines from accessing YouTube to index the site. However, to prevent the wholesale copying of videos from YouTube in violation of existing partner agreements, Google has placed automated restrictions on bots' ability to access YouTube. Any legitimate search engines, including Microsoft's Bing, Yahoo!, and China's Baidu, that wish to crawl and index YouTube, are given an exception to the bot restrictions.

Google is aware that Microsoft has complained that, for a time, it was unable to crawl YouTube. Google believes that Microsoft was unable to do so because Microsoft changed the name of its web crawler from "MSNBot," which was allowed to crawl and index YouTube, to "Bingbot" without informing Google of that name change. Thus, when Microsoft's newly-named Bingbot attempted to crawl YouTube, it was denied access because Google's automated systems believed that the newly-named crawler was not a legitimate search engine. The first time Microsoft made us aware of the problem was through their antitrust complaint in the EU. We promptly granted an exemption for Bingbot so that it could crawl and index YouTube. Google has been committed, and remains committed, to allowing third-party search engines to index YouTube content.

Google does not allow third parties to crawl our book content. First, because of copyright laws, Google does not allow third parties unfettered access to scan and reproduce Google Books content that is under copyright, including that which Google has licensed from third parties for our own use. Second, Google has invested many millions of dollars in our scanning project because we believe that users benefit from getting access to out-of-print and public domain books. Google's competitors, including Microsoft, could have done the same, but chose not to because they believed that the cost of doing so was not worth the benefit. Indeed, as an example, Microsoft began scanning the same corpus of books but abandoned its efforts, deciding to concentrate on other areas that it believed were more profitable, like travel search.⁸ Nothing in the proposed Google Books settlement agreement would have prevented third parties from scanning and indexing books.

- 13. In both your written and oral testimony, you stated that Google believes in "loyalty, not lock-in." You also testified that Google has a team of engineers whose sole goal is "to help our users move their data in and out of Google's products." On the day of the hearing, Google spokespeople were quoted in the press saying that Google "place[s] no restrictions on advertisers transferring their own ad campaign data to other platforms." Google's own AdWords API Terms and Conditions, however, purport to impose restrictions on advertisers' use of this data, including by restricting the tools that advertisers may use to manage their ad campaigns (see, e.g., section III.2.c). Some claim that the tools Google prohibits would allow businesses, particularly small businesses, to run ad campaigns on multiple ad platforms more easily and efficiently.**

- a. Does the current version of the AdWords API Terms and Conditions (<http://code.google.com/apis/adwords/docs/terms.html>) permit advertisers to use their data on other platforms "without restriction," including use of third-party tools for this purpose?**

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

⁸ See Betsy Schiffman, "Microsoft Gives Up on Book Search", Wired Magazine, May 23, 2008, <http://www.wired.com/epicenter/2008/05/microsoft-cans/>.

advertisers.⁹ Competitors such as Microsoft also provide advertisers with simple instructions to import their Google ad data into their advertising platforms.¹⁰

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.¹¹ 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).¹² 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.

b. If not, will Google commit to remove this and all other restrictions in the API Terms and Conditions on advertisers' use of ad campaign data?

As stated above, every advertiser—big or small—can export their ad campaign data and easily move it in and out themselves with no restrictions.

14. Among the concerns raised about Google's relationship with specialized search engines is scraping. "Scraping" refers to the unauthorized use of content that is collected, or "scraped," when a site is crawled and indexed by a search engine. Both Trip Advisor and Yelp, whose reviews appeared without permission on Google Places and whose CEO also testified at the hearing, have made such complaints. It is my understanding that Google has recently discontinued the practice of scraping reviews for use on its Places page.

a. Will Google commit to preventing any future occurrence of unauthorized scraping?

⁹ 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>.

¹⁰ 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).

¹¹ AdWords Editor Help, "How Do I Export a Spreadsheet from AdWords Editor," accessed November 1, 2011, <http://www.google.com/support/adwordseitor/bin/answer.py?answer=38657>.

¹² 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.").

- b. **There is, of course, a great benefit that Google has already received as a result of scraping reviews from sites like Yelp and Trip Advisor. Users tend to visit sites that have amassed numerous reviews. As a result, companies invest substantial time and resources in developing robust databases of user reviews. Google Places was able to attract traffic and generate its own reviews on the basis of content—one might even say intellectual property—it took from competing sites. What does Google plan to do to address the problems caused by your prior scraping policy and the manner in which it has disadvantaged competing user review sites?**

Google believes strongly in protecting copyright and other intellectual property rights. Google relies, as does every other major search engine, on the established doctrine of fair use in order to display snippets of text in our search results, giving users a preview of the type of content they can find for a given link. Indeed, snippets are an important feature of search generally, and they drive traffic to websites. Google previously displayed review snippets from sites such as Yelp and TripAdvisor in our thematic local search results. Google's practice of displaying review snippets did not disadvantage review sites—in fact, quite the opposite. Google sends millions of clicks a month to Yelp, TripAdvisor, and other review sites. Google facilitates free traffic to both Yelp and TripAdvisor, and each of the sites has reaped the benefits of this free user exposure.

Yelp has aired numerous concerns in the press over the past few years, and although Google tries to act responsibly in response to website concerns, ultimately Google builds our search results and search-related products 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.

15. **According to a Nielsen report from this month, 40 percent of U.S. mobile consumers now use smartphones, and Google's Android is the fastest growing and most popular mobile operating system. Some have expressed concern that Google may be using Android "compatibility issues" as a means of excluding competitors. For example, Skyhook, a company that produces geolocation software for mobile devices, claims that Google, a direct competitor, informed both Samsung and Motorola that handsets loaded with Skyhook software could not be shipped due to incompatibility issues between Skyhook software and the Android platform.**

- a. **Does Google ask or require handset manufacturers that contract with you to ship mobile phones with only software that you approve?**

No. Google does not require handset manufacturers to ship mobile phones with only software that we approve. 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 Compatibility Definition Document ("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.

b. Does Google ask or require manufacturers to preload phones with Google applications?

No. Google does not require that smartphone manufacturers preload phones with Google applications.

Android is a free, open source platform for mobile devices. The complete Android source code is available for download for free from the Android Open Source Project website.¹³ Any developer or manufacturer can use, modify, and distribute the Android operating system without Google's permission or any payment to Google. For example, Amazon recently announced the Kindle Fire—its new tablet device—using the Android source code without Google's involvement. This is one of the exciting and innovative aspects of Android that will help foster innovation and competition in the smartphone market.

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.

Manufacturers can choose to pre-install Google applications on Android devices, but they can also choose to pre-install competing search applications like Yahoo! and Microsoft's Bing. Many Android devices have pre-installed the Microsoft Bing and Yahoo! search applications. No matter which applications come pre-installed, the user can easily download Yahoo!, Microsoft's Bing, and Google applications for free from the Android Market.¹⁴ In addition, Android gives manufacturers the freedom to pre-install third-party app stores, like the Amazon Appstore for Android, where a user can download a variety of apps, including Microsoft's Bing.¹⁵

c. Will Google commit to removing its own view of "compatibility" with Android as a prerequisite to the shipment or sale of handsets?

As noted in our answers to Questions 15a and b, 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 Compatibility Definition Document ("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

¹³ See Android Open Source Project, "Downloading the Source Tree", accessed on November 1, 2011, <http://source.android.com/source/downloading.html>.

¹⁴ Users can access the Microsoft Bing Search application here: https://market.android.com/details?id=com.microsoft.bing&feature=search_result; the Yahoo! Search application here: https://market.android.com/details?id=com.yahoo.mobile.client.android.yahoo&feature=search_result; and the Google Search application here: https://market.android.com/details?id=com.google.android.googlequicksearchbox&feature=search_result.

¹⁵ Amazon makes the Microsoft Bing Search application available here: <http://www.amazon.com/Microsoft-Corporation-Bing/dp/B004T54Y2M/>

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.

16. In 2003, you were quoted in the New York Times as stating that “[m]anaging search at our scale is a very serious barrier to entry.”

a. Why is scale a “very serious barrier to entry” in search?

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.¹⁶ 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.

Scale 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?”

b. Given that scale constitutes such a serious barrier to entry, do you agree that search engines lacking Google’s scale are unable to offer as comprehensive and relevant results as those provided by Google, regardless of whether such search engines are “one click away” for users?

As explained above, Google does not believe that scale constitutes a barrier to entry. Google’s size has not prevented competitors from reaching audiences and achieving success. Indeed, in just two short years, Microsoft’s Bing has grown to the same volume of queries that Google had in 2007. Google believes that Microsoft’s Bing and Yahoo! achieved the scale necessary to compete with Google long ago.

Google offers better results than Microsoft’s Bing or Yahoo! not because we are bigger but because our engineers are better, our technology is better, and our indexing and crawling solutions are more sophisticated. A comprehensive crawl is the first ingredient to precise query matching, and Google devotes significant resources and manpower to constructing, updating, and maintaining a highly sophisticated crawling and

¹⁶ 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>.

indexing system. Independent analysts have confirmed the superiority of Google's index; as reported in June 2011, "the experts at SMX [a conference for search marketing experts] seemed to believe that Google's crawler is currently much better at discovering content than Microsoft Bing's search bot (undoubtedly part of why Google is still the No. 1 search engine in the market, by comScore's latest measure)."¹⁷

17. During the hearing, some Senators suggested a panel to oversee changes in your company's algorithm. I want to state clearly and for the record that I oppose subjecting a company's core intellectual property to such regulation. Please describe the problems that could result from opening Google's algorithm to regulatory oversight.

In the open world of the Internet where competition is a click away, innovation happens at a feverish pace. In this rapidly changing industry, Google has evolved to operate at lightning speed; our engineers test more than ten thousand changes per year and ultimately make more than 500 changes a year to our search algorithms, or one to two changes *per day*. Each change focuses on improving the user experience, with the understanding that if Google does not deliver the best search results, someone else will.

Google's engineers also work tirelessly to modify the algorithms to protect users from spam, malware, viruses, and scams. Purveyors of these fraudulent devices are always looking for ways to get around Google's algorithms to entrap consumers. Having a government panel oversee each change to the algorithms would tie Google's hands, and make it impossible for our engineers to react quickly and effectively to improve user experience and keep users safe. This would severely harm consumers.

Having a government panel oversee algorithm changes raises other serious concerns. There is no "correct" search result. Results are generated in response to user queries. For example, a search for [President Obama address] could be asking for the location of the President's residence or a speech that the President made. Google's formulation of search results is a type of "scientific opinion"—a prediction of what the user might be looking for. Those results have been deemed by several courts to be a protected form of free speech under the First Amendment.¹⁸ Just as a government panel could not dictate to the New York Times, the Drudge Report, or the Huffington Post what stories they could publish on their websites without infringing their freedom of speech, so too would government-mandated results likely violate Google's freedom of speech.

A government oversight panel for search would also enable firms that compete with Google to file spurious complaints in an effort to slow down Google's innovations. This would hurt consumers.

The purpose of the antitrust laws is to protect competition (not competitors) for the benefit of consumers. To this end, the openness of the Internet and the ability of users to switch easily between rival websites ensure robust competition and consumer welfare. Where users can effectively inform Google which changes they like by clicking away from Google, there is no need for a government panel to ensure changes are made for the benefit of consumers.

18. While under review by the Justice Department for the acquisition of ITA Software, Google said on its website that "our goal will be to refer people quickly to a site where they can actually purchase flights, and that we have no plans to sell flights ourselves," specifying that "Google does not plan to sell airline tickets directly."

¹⁷ "SEO Case Study: Sites See More Pages Indexed by Google Than Bing -- Even Post Panda," Brafton News, June 9, 2011, <http://www.brafton.com/news/seo-case-study-sites-see-more-pages-indexed-by-google-than-bing-even-post-panda-800527170>.

¹⁸ See *Kinderstart.com, LLC v. Google, Inc.*, Case No. C 06-2057 JF (RS) (N.D. Ca., March 16, 2007); *Search King, Inc. v. Google Technology, Inc.*, Case No. Civ-02-1457-M (W.D. Okla., Jan. 13, 2003).

a. Does this remain Google's position in regard to travel transactions?

We do not currently plan to sell airline tickets directly, and the first version of Google flight search contains links to airline websites where you can buy a ticket.

b. Please update the Subcommittee on Google's current and future plans to be involved in facilitating the sale of travel services, including booking flights and hotels.

We've been excited about the opportunity to work with ITA to build extraordinary tools for flight search. We continue to look for areas where we can offer users compelling travel services. At present, we have no plans to offer flight or hotel bookings.



**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**

Senator Grassley’s Written Questions for Eric Schmidt

- 1. Some Iowans question whether “Google promotes fairness, competition and transparency in the online search business.” What can you tell them about this? Do Google’s business practices promote fairness, competition and transparency? How?**

Google is proud of its business practices. The open web of high-quality publishers is important to Google’s success. Through Google Webmaster Central, the company has made substantial investments in tools and transparency for websites. In addition to building industry-leading tools to help websites diagnose problems and improve performance, Google provides more information about how our rankings work than any other major search engine.

In order to continue to provide good results, however, some aspects of search algorithms need to be kept secret. Otherwise spammers would game their way to the top of search result rankings with tricks and gimmicks. Because spammers consistently try to game Google’s search algorithms, Google has published detailed quality guidelines for webmasters. In addition to providing constructive advice for improving website performance on Google, these guidelines clearly articulate spam tactics that are against the rules and could lead to a site being demoted or removed from our index.

Competition is just one click away. Google does not—and cannot—make it more difficult for users to switch to Microsoft’s Bing, Yahoo!, Blekko, or any specialized search engine such as Amazon (for products), Yelp (for local reviews), or OpenTable (for restaurant reviews). As Microsoft researcher Ryen White observed this year in summarizing his research findings, “The barrier to switching Web Search engines is low and multiple engine usage is common.”¹ In fact, according to multiple studies, including one from Microsoft,² it is clear that a majority of searchers use more than one search engine in any given month (what the industry refers to as “multi-homing”).³ Multi-homing is evidence that there is no lock-in: if there were, the studies should demonstrate no multi-homing because users are locked-in to a single search engine.

¹ Qi Guo, Ryen W. White, Yunqiao Zhang, Blake Anderson, and Susan T. Dumais, “Why Searchers Switch: Understanding and Predicting Engine Switching Rationales”, SIGIR 2011, July 24-28, 2011, <http://research.microsoft.com/en-us/um/people/ryenw/papers/GuoSIGIR2011.pdf>.

² *Id.*

³ See Jake Loechner, “Websearchers Are Tenacious”, Center for Media Research, October 4, 2010, <http://www.mediapost.com/publications/article/136907/> (reporting on 2010 Performics Study that found 79% of Internet searchers will try a different site if they do not initially find what they seek); see also Jacqui Cheng, “Nielsen: Fickle Search Engine Users Could Benefit Bing”, Ars Technica, June 2, 2009, <http://arstechnica.com/web/news/2009/06/nielsen-fickle-search-engine-users-could-benefit-bing.ars>

2. In the 1990's when Microsoft added enhanced desktop search to Windows, Google took the position that it was an illegal tying of the dominant Windows platform. Today, many competitors are concerned that Google is illegally tying services to Google's dominant Search and Search advertising businesses in a similar way. For example, Google Maps and Google Places have been given priority placing in Google search results at the expense of competitors like MapQuest, Yelp or Trip Advisor. How is tying like this acceptable, but Microsoft's was not?

The manner in which Google and other search engines (including Microsoft's Bing) display their search results does not "tie" one kind of result to another. There is one product—search—and numerous means of displaying information that may be useful and responsive to queries. Users are not coerced in any way; they can click on what they want or navigate to an entirely different information source.

3. Some Iowans have expressed concerns that because of Google's dominance in the online search market, it "can easily pick winners and losers based on some arbitrary and undisclosed system." Another Iowan wrote, "Over the past few years, Google has ratcheted up competition with established websites by developing its own products and often promoting them above regular search results. . . . How will a startup compete with a giant like Google that has essentially monopolized the Internet?" Are these valid concerns?

Google's efforts to deliver responsive results to our users in no way harm competition or deter innovators from entering the market. To the contrary, Google actually provides free promotion to millions of innovative websites through our search results. Indeed, innovation on the Internet is happening at an unprecedented rate. As the CEO of Blekko (a relatively new firm that offers a general search engine and recently attracted \$30 million in additional financing) noted last month: "We don't need federal intervention to level the playing field with Google. Innovation and competition are far more powerful instruments."⁴

The Internet is incredibly dynamic and new companies with tremendous ideas are being created every day. Facebook, Twitter, and LinkedIn all achieved extraordinary success long after Google began integrating thematic algorithms into our search results—and all are changing the way in which users think about finding information online. Already, many users utilize these sites, and others like them, to find the information they need. The New York Times, for example, receives only 16% of its web traffic from Google.⁵ Similarly, ComedyCentral.com receives more traffic from Facebook than it does from Google.⁶ Amazon, Travelocity, and Expedia, among others, provide thematic search results and do not need Google to find an audience—they are quite successful in finding an audience on the Internet.

Moreover, history shows that popular technology is often supplanted by entirely new models. Even in the few weeks since the hearing, Apple has launched an entirely new approach to search technology with Siri, its voice-activated search and task-completion service built into the iPhone 4S. As one respected technology site

(finding that 72 percent of all heavy Internet searchers use more than three different search engines in a month).

⁴ Rich Skrenta (co-founder and CEO of Blekko), "Blekko's not afraid of Google, why is Washington?", Skrentablog, September 20, 2011, http://www.skrenta.com/2011/09/blekkos_not_afraid_of_google_w.html.

⁵ Compete.com, September 2011 Site Analytics Data for The New York Times, accessed October 27, 2011, <http://siteanalytics.compete.com/nytimes.com/>.

⁶ Compete.com, September 2011 Site Analytics Data for Comedy Central, accessed October 27, 2011, <http://siteanalytics.compete.com/comedycentral.com/>.

reported: “[E]veryone keeps insisting that Apple will eventually get into the search engine business. Well they have. But not in the way that everyone was thinking. Siri is their entry point.”⁷ Another commentator has described Siri more simply as intended to be a “Google killer.”⁸

Finally, we do not have to speculate as to whether there are new entrants in vertical search services such as comparison shopping and local search and review sites. There are new entrants in these market segments all the time. A new comparison shopping site, FindTheBest, launched by the co-founder of DoubleClick last year, just raised \$6 million in venture funding over the summer. Cheapism is an comparison shopping site that launched in 2009, dedicated to bargain hunters on the Internet and was recognized in the New York Times and on CBS New York. More recently, a new entrant called Centzy launched a website that combines both local search and comparison shopping functionality. Centzy’s CEO used to work at SnapFish and is currently seeking funding following its successful launch for New York and San Francisco. Unlike Yelp, Centzy integrates pricing information for goods and services on its site so that users can comparison shop for local services. Barefootfloors.com is a comparison shopping site that launched in January that is focused on home goods and “is now helping online shoppers to educate themselves on everything related to the home and to save money on a wide variety of products for the home.”⁹ In February of this year, the travel comparison shopping site, Hipmunk, received \$4.6 million in venture funding, even as Google continues to expand its own flight search and hotel search functionality.

These are just a few of the many recent entrants in local and comparison shopping that are entering the market even as Google continues to innovate. While they may not all succeed, venture capitalists and entrepreneurs alike continue to believe they can compete with Google, Yelp, Nextag, and other established competitors.

4. How would you characterize Google’s view of intellectual property and its role in the economy?

Google believes in a strong and balanced approach to protecting copyright and other intellectual property rights, in line with the Constitution’s goal of promoting “the progress of science and useful arts.” 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 invests millions of dollars in engineering and other resources to help rightsholders fight this misuse.

Google adheres to the takedown process Congress established under the Digital Millennium Copyright Act (“DMCA”), which provides copyright owners with expeditious recourse when they discover infringement online while also giving online service providers like Google the certainty necessary to invest in the services that millions of Americans rely on each day. Across our search engine and hosted products, we remove or disable access to millions of infringing items each year at the request of copyright owners. We voluntarily take several steps well beyond our legal obligations, and we regularly cooperate with a wide array of law enforcement authorities.

⁷ MG Siegler, “Why So Siri-ous?”, TechCrunch, October 16, 2011, <http://techcrunch.com/2011/10/16/iphone-siri/>.

⁸ Eric Jackson, “Why Siri Is a Google Killer”, Forbes, October 28, 2011, <http://www.forbes.com/sites/ericjackson/2011/10/28/why-siri-is-a-google-killer/2/>.

⁹ Tanya Tymoshuk, “BarefootFloor.com: New Price Comparison Engine Helps Consumers Shop Smartly for Home Goods”, Yahoo! News, January 11, 2011, <http://news.yahoo.com/barefootfloor-com-price-comparison-engine-helps-consumers-shop-20110111-070000-289.html>.

With the explosive growth of the Internet and skyrocketing demand for Internet-enabled devices, it is innovation-friendly copyright limitations and exceptions, principally fair use and the DMCA safe harbors, that have directly led to the creation of entirely new marketplaces for promoting and monetizing content. Online platforms like YouTube, Facebook, and Twitter in turn have unleashed new sources of creativity, economic development, and jobs. It is no exaggeration to note that the DMCA set the legal foundation for e-commerce. The Computer and Communications Industry Association has found that industries that rely on fair use and other limitations generate \$4.7 trillion in revenue, represent one sixth of total U.S. GDP, and support 17 million jobs. While online piracy remains a serious enforcement problem, we should not lose sight of the overall balance of our nation's copyright laws, which continue to spur a broad array of American-bred creativity and innovation.

Google also works closely with rightsholders to make authorized content more accessible on the Internet. We realize that providing users with access to legitimate content is critical to addressing the problem of copyright infringement online. From its startup phase in 2005, YouTube is now monetizing for content owners over three billion video views per week. We create revenue for more than 20,000 partners. Record labels are now making millions of dollars a month on YouTube. Hundreds of YouTube users make six figures a year. Today over 2,000 media companies—including every major U.S. network broadcaster, movie studio, and record label—use the copyright protection tools that YouTube offers, and a majority of them choose to monetize rather than block their content online.

- 5. I've heard complaints from a number of rights holders regarding Google's approach to intellectual property rights. In the opinion of many of Google's critics, Google has taken a cavalier attitude toward the intellectual property of others. The issues that are being raised are not insignificant, considering the ease in which a site engaged in counterfeiting or piracy can be found with a search, the profits earned from advertising on such sites, and the large number of mobile applications on the Android platform that facilitate piracy. After reading about the recent Google \$500 million settlement with the Department of Justice regarding the placement of ads on rogue pharmaceutical sites, I'm interested in hearing about Google's approach to ensuring the protection of intellectual property rights. As you know, a few months ago the Senate Judiciary Committee favorably reported the PROTECT-IP Act that is intended to address the rampant problem of online infringement. I believe that Google as a company should do more voluntarily to protect intellectual property rights. How does Google plan to do better?**

Google understands 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 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.

- 6. With so many people now using smart phones, one of my constituents wonders what sort of data Google is collecting from smart phone users. Do you track more than Google searches? Are you able to track text messages and the use of applications? She is concerned about the amount of personal information that Google may have access to, and if there are any privacy issues that are implicated by Google’s practices.**

Google respects our users’ privacy. The ordinary phone and text messaging features of mobile devices are not handled by Google, but rather by the mobile network operator. Therefore, Google does not track these user phone calls or text message.

The Google search service, as well as other Google applications and Google web services (such as Gmail and YouTube) are available to users on mobile devices, whether they use Android or another operating system. The Google Mobile Privacy Policy (<http://www.google.com/mobile/privacy.html>) and Google Privacy Policy (<http://www.google.com/intl/en/privacy/privacy-policy.html>) describe the types of information collected by Google from mobile devices.



**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 from Senator Al Franken for Eric Schmidt

- 1. In your testimony you stated that you are not aware of “any unnecessary or strange boosts or biases” in Google’s algorithms for Google’s own products and services. Can you confirm that Google does not give its own services an unfair advantage in its organic search results?**

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.

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.”¹

These universal 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 give an “unfair advantage” to our “products and services” is based on an inaccurate premise. These 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.

¹ Danny Sullivan, “Being Search Boxed to Death”, Search Engine Watch, March 4, 2001, <http://searchenginewatch.com/article/2065235/Being-Search-Boxed-To-Death>.

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.

In sum, we view our thematic search results as part of our search results, not as a separate product or service. With respect to a page on a Google-owned site such as YouTube that is crawled and ranked within our search results, such a page is not placed higher than an identical page would be if it were owned by another company.

2. Please explain why Google's products (such as Google Places and Shopping) are not clearly labeled as Google products in your organic search results. Would Google consider clearly labeling these items so consumers understand these products are owned by Google?

As I explained in answer to Question 1, thematic search results (such as Places and Shopping) incorporated in universal search results are not separate "products" 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. These universal search results *are* our search service—they are not separate "Google content."

In response to a query seeking local information, for example, Google may either group local results together, or may distribute local results throughout our search results. Either way, Google is simply trying to organize and display local business results so as to save users time by displaying local information in the most effective manner, in order to eliminate the need to conduct multiple searches. As with any of Google's search results, local business listings are ranked according to likely relevance. For example, typing in a query for [shoe repair 22203] will typically return local business listings organized by geographic proximity to that zip code. The ranking of local business results is not affected by payment.

3. What factors does Google consider in making the decision when and where to rank "answers" above "links" (such as to a metasearch site like Nextag)? Has Google considered providing search "answers" that are not owned or controlled by Google, for example pointing to products listed on a different product comparison service other than Google Shopping?

Thematic search results for particular types of content (video, images, news articles, products, and so on) are incorporated when our consumer testing and data analysis shows that those results algorithms are most likely to deliver the results sought by our users. As I noted in my response to Question 1, oneboxes are displayed when Google believes it is likely that a user is seeking a specific answer, and they often contain information or data that are licensed from third parties.

4. During his testimony, Nextag CEO Jeffrey Katz stated that Google offers "unique ad placements, which competitors such as [Nextag] can't even purchase." Does Google prevent companies from purchasing certain ads? If so, what process does Google use to determine who is eligible to bid for certain ads?

NexTag is a valued customer of Google's that advertises extensively through our traditional AdWords system. What Mr. Katz was referring to was a discrete ad format where users see a specific product's picture and price. Our user studies have found that users expect to be able to purchase a product when they click on advertisements containing a product's picture and price. Accordingly, we require advertisers that use this format to direct their advertisement to a page where the product can be sold. As of this past September, we were working with NexTag to set up Product Listing Ads for the products sold directly through the site.

5. During Mr. Stoppelman's testimony, he indicated that Yelp had difficulty removing its content from Google Places's reviews, and he was told Google would only remove Yelp content from its site if Yelp "de-indexed" its website.

a. Please describe, in detail, the official process for a company to challenge Google's use of its content in a manner which the company believes is inappropriate?

Every site owner has the option to use the robots exclusion protocol, also referred to as robots.txt, to indicate to Google or any other search engine that they do not want particular webpages, or even an entire site, to be crawled and indexed.² 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,³ or by accessing one of many publicly available robots.txt files.⁴

In addition, Google regularly engages in business conversations with people in the search industry, from industry pundits to local businesses to SEO firms to site owners of websites both large and small. When Yelp raised issues with the way Google indexed Yelp content in Google's local search results, Google willingly engaged in a series of business conversations with Yelp in an attempt to address Yelp's numerous concerns.

b. Does Google "scrape" content from other websites? If so, please list the websites where Google is appropriating content and indicate whether any of these companies have complained to Google about this practice.

Google believes strongly in protecting copyright and other intellectual property rights. Google relies, as does every other major search engine, on the established doctrine of fair use in order to display snippets of text in our search results, giving users a preview of the type of content they can find for a given link. Indeed, snippets are an important feature of search generally, and they drive traffic to websites. Google previously displayed review snippets from sites such as Yelp and TripAdvisor in our thematic local search results.

² 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>.

³ 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>.

⁴ A non-comprehensive list of robots.txt files submitted by independent programmers is available here: <http://www.robotstxt.org/db.html>.

Google's practice of displaying review snippets did not disadvantage review sites—in fact, quite the opposite. In fact, Google sends millions of clicks a month to Yelp, TripAdvisor, and other review sites. Google facilitates free traffic to both Yelp and TripAdvisor, and each of the sites has reaped the benefits of this free user exposure.

Yelp has aired numerous concerns in the press over the past few years, and although Google tries to act responsibly in response to website concerns, ultimately Google builds our search results and search-related products 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.

- 6. Many small businesses depend upon the Internet for customers to find them. I have heard from a number of Minnesota businesses that are concerned that the quality assessment measures Google rolled out in “Panda” will prevent them from competing with larger companies that can invest more in “search engine optimization.” What is Google doing to address this concern and ensure that small businesses are not unfairly impacted by these changes?**

Google's ongoing aim is to ensure that we return search results that provide users with best answers. We developed the Panda algorithm in response to feedback from our users who wanted more relevant answers and a better user experience. While Google aims to provide users with websites that are likely to be the most useful for our users, over the past few years, websites with low-value content have learned how to game Google's algorithms so that they often outranked better websites. The Panda algorithm simply more adeptly ranks high-quality sites—sites with original content and information such as research, in-depth reports, thoughtful analysis, etc.—regardless of the size of the business in question.

Panda was a set of algorithm changes intended to improve the quality of search results and make it harder for poor quality sites to rank highly in Google's search algorithms. Panda does not prevent small businesses from competing with larger companies. We work hard to make sure that all companies' websites are ranked according to their usefulness to queries, and we continually keep small businesses in mind when we test out new algorithms and evaluate possible improvements to the algorithms.

- 7. In your testimony, you estimated that just over two-thirds of Android phones were shipped with Google products pre-installed. Please confirm the exact percentage of Android phones that are shipped with Google products pre-installed, and please specify which apps are pre-loaded or bundled, including Google Maps; Google Places; Google +; Google Shopping; Gmail; Latitude, etc..**

As I mentioned in my testimony, my estimate of the number of phones that come with Google products pre-installed was “not too precise.” It was, in fact, an educated guess. Android's code is open-sourced, meaning that manufacturers are free to obtain the Android source code and create Android phones without Google's knowledge or involvement.⁵ Because Google does not know the total number of Android-powered phones, it is not possible to confirm the percentage of Android phones that ship with Google products pre-installed.

Google does not demand that smartphone manufacturers make Google the default search engine as a condition of using the Android operating system. Android is a free, open source platform for mobile devices. The complete Android source code is available for download for free from the Android Open Source Project

⁵ See Android Open Source Project, “Downloading the Source Tree”, <http://source.android.com/source/downloading.html>.

website.⁶ Any developer or manufacturer can use, modify, and distribute the Android operating system without Google's permission or any payment to Google. For example, Amazon recently announced the Kindle Fire—its new tablet device—using the Android source code without Google's involvement. This is one of the exciting and innovative aspects of Android that will help foster innovation and competition in the smartphone market.

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 access to or use of Android on pre-installation of any Google applications or on making Google the default search engine.

Manufacturers can choose to pre-install Google applications on Android devices, but they can also choose to pre-install competing search applications like Yahoo! and Microsoft's Bing. Many Android devices have pre-installed the Microsoft Bing and Yahoo! search applications. No matter which applications come pre-installed, the user can easily download Yahoo!, Microsoft's Bing, and Google applications for free from the Android Market.⁷ In addition, Android gives manufacturers the freedom to pre-install third-party app stores, like the Amazon Appstore for Android, where a user can download a variety of apps, including Microsoft's Bing.⁸

8. I have heard complaints that it is difficult to delete pre-loaded apps from Android phones. Please explain the process to delete pre-loaded apps, and how it compares to the process for deleting other apps that are not pre-installed on a phone.

During the manufacturing process, a manufacturer typically loads a mobile device with a complete system image consisting of the operating system and pre-loaded applications. The system image is loaded into read-only memory, which for technical reasons cannot be modified by the user. Because Android devices are manufactured in this manner, the user cannot alter the Android platform itself or any pre-loaded applications. As a result, any application that is pre-installed and part of the system image cannot be deleted. This is not an issue limited to Android; both Apple's iOS and Microsoft's Windows Phone are loaded as system images that prevent modifying the operating system or removing pre-loaded applications.

But Android is designed, more than any other mobile operating system, to allow users to fully personalize their mobile devices. Users are given ample freedom to modify the user interface and features of their Android devices. Users can easily move any applications they do not wish to use away from the home screen or into folders, can easily install one of over 300,000 applications available in the Android Market and other applications sources, and can use these applications to the exclusion of any pre-loaded software.

⁶ See Android Open Source Project, "Downloading the Source Tree", accessed on November 1, 2011, <http://source.android.com/source/downloading.html>.

⁷ Users can access the Microsoft Bing Search application here: https://market.android.com/details?id=com.microsoft.bing&feature=search_result; the Yahoo! Search application here: https://market.android.com/details?id=com.yahoo.mobile.client.android.yahoo&feature=search_result; and the Google Search application here: https://market.android.com/details?id=com.google.android.googlequicksearchbox&feature=search_result.

⁸ Amazon makes the Microsoft Bing Search application available here: <http://www.amazon.com/Microsoft-Corporation-Bing/dp/B004T54Y2M/>

Furthermore, the new version of the Android platform (Android 4.0: Ice Cream Sandwich) allows the user to disable pre-loaded applications. Although the application cannot truly be deleted for the reasons described above, a disabled application is hidden from view and cannot be launched unless the user re-enables it.

9. How does Google define whether an application is “compatible” with the Android operating system? What steps has Google taken to help application developers to understand how applications are assessed for compatibility so they are not barred from the Android market?

Google does not define whether applications are “compatible” with the Android operating system. Google has, however, 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 Compatibility Definition Document (“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.

Application developers seeking to create an application that runs on the Android operating system can use the Android application programming interfaces (“APIs”) that are made available through the Android operating system. Developers can also download the Android software development kit (“SDK”), and Android native development kit (“NDK”), which are all available for free on the Android developer website.⁹ These tools allow anyone to create rich, innovative applications that can be distributed on Android devices.

10. If a copyright or trademark owner alerts Google that a website or application is operating illegally, what process does Google take against those sites and applications? Is there a way to expedite this process?

When we are notified by a rightsholder of infringing activity or material, we act promptly to address the issue. The nature of our response depends on the Google product that is involved—if we are hosting the content in question, we can remove it; if it involves advertising on an infringing site, we can remove the ads and terminate the site’s account; if infringing material is appearing in search results, we can prevent those links from appearing in future search results.

For example, on YouTube, we don’t even wait to be notified—we proactively employ our Content ID tools to match every video against our database of “claimed” audio and video before it appears on the site. 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. This is possible because YouTube is a video hosting service, which means the videos reside on servers that we control. 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. In addition to our Content ID system, we also have developed a sophisticated Digital Millennium Copyright Act (“DMCA”) takedown system, the Content Verification Program (“CVP”), for reliable, high-volume submitters. The response time for those using our CVP system is effectively immediate.

In contrast, where web search is concerned, Google has no ability to “take down” the sites that exist on the web, because we don’t control the web. Instead, when copyright owners notify us of infringing material appearing in search results, we remove it from future results. While we have always processed takedown

⁹ Android Developers, Download the Android SDK, accessed November 1, 2011, <http://developer.android.com/sdk/index.html>.

notices expeditiously, over the past several months, we have dramatically improved our turnaround time for DMCA notices for web search. We did this by building new tools for reliable, high-volume submitters. These tools are now being successfully used by more than a dozen content industry partners who together account for more than 75% of all URLs submitted in DMCA takedowns for web search. Our goal was to reduce average response time for these notices to less than 24 hours. In fact, we've exceeded that goal. Current average response time is now less than seven hours.

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. 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 promptly when we are notified that our advertising products are being used by infringing sites. 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.

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. 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.

We also have a fast and easy complaint form for brand owners to notify us of ads for potentially counterfeit goods. Earlier this year, Google announced that for brand owners who use this form responsibly, we will commit to an average response time of 24 hours or less. Brand owner feedback is an important way in which we improve our systems—as we get more data about bad ads, we get better at counteracting the new ways that bad actors try to game the system.

- a. **If a property holder alerts Google that a new incarnation of the website or application has become available, how quickly does Google take action against this new site or application?**

As mentioned above, the response time for DMCA notices varies depending on the Google product that is involved. For DMCA takedown notices submitted through our new tools, which together account for more than 75% of all URLs submitted in DMCA takedowns for web search, we are happy to announce that we've exceeded our goal of reducing average response time to less than 24 hours. Current average response times are now less than seven hours.

- b. **Does Google have a system in place to screen out applications that appear to advertise intellectual property infringement in the title or description of the application (i.e. – a “Freemusicdownload” app) before these applications are listed in the Android marketplace?**

Android Market provides a platform for independent developers to distribute software applications (“apps”). Our policies on Android Market are clear: applications that infringe copyrights, or otherwise violate the law, are prohibited. All Android Market developers must agree to the Developer Distribution Agreement (“DDA”) before submitting any apps. Section 7.2 of the DDA provides, “if Google is notified by you or otherwise becomes aware and determines in its sole discretion that a Product . . . violates the intellectual

property rights or any other rights of any third party . . . Google may remove the Product from the Market.”¹⁰ Further, the Android Market Developer Program Policies (the “Content Policy”), incorporated by reference into the DDA, provide:

Intellectual Property: Don’t infringe on the intellectual property rights of others, including patent, trademark, trade secret, copyright, and other proprietary rights. We will respond to clear notices of alleged copyright infringement. For more information or to file a DMCA request, please visit our copyright procedures.

Illegal Activities: Keep it legal. Don’t engage in unlawful activities on this product.¹¹

The Content Policy also states: “Serious or repeated violations of the Developer Distribution Agreement or this Content Policy will result in account termination. Repeated infringement of intellectual property rights, including copyright, will also result in account termination.”¹² Correspondingly, we take steps to terminate the accounts of developers who are repeat infringers. Furthermore, we attempt to detect and terminate other accounts created by developers who have been previously terminated for repeat infringement and other policy violations. We also require all developers to register with Google Checkout and pay \$25. This basic authentication step acts as a filter to keep out spammers and other bad actors. Typically, after three policy violations of any kind, we terminate the developer account. In addition, we also ban related accounts whether or not those accounts have directly incurred any policy violations.

Our practice is to remove an application pursuant to the Content Policy if we become aware, through formal DMCA complaints or otherwise, that such application violates those policies.

We offer a web form designed to enable rightsholders to submit DMCA notices electronically for Android Market. During 2010, Google removed 1,026 applications through our DMCA copyright process for Android Market. Through September 2011, Google has removed 1,960 applications through our DMCA copyright process for Android Market.

Our response time for DMCA copyright notices for Android Market has varied depending on the incoming volume of notices and the app in question. Currently, our average response time is less than 48 hours for notices submitted electronically through our web form.

11. What measures does Google take to make sure that its ads are not placed on websites engaged in copyright or trademark infringement? Please explain if these policies are consistent across all Google advertising products, including AdSense, DoubleClick, and AdMob.

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. DoubleClick is an ad management and ad serving platform. As with our other advertising tools, we are prepared to take appropriate action, including account termination, where DoubleClick publishers are shown to be using our product to serve ads on infringing content.

¹⁰ Android, “Android Market Developer Distribution Agreement”, accessed November 1, 2011, <http://www.android.com/us/developer-distribution-agreement.html>.

¹¹ Android, “Android Market Developer Program Policies”, accessed November 1, 2011, <http://www.android.com/us/developer-content-policy.html>.

¹² *Id.*

It is generally through the AdSense program that Google places ads on other websites. 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, 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. We 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 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. 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.

12. How many copyright and trademark violators have been expelled from AdSense and other Google advertising services in 2010 and 2011? What measures has Google adopted to prevent violators from re-joining these services using a new account? Does Google have a system in place to pre-screen websites prior to them signing up with one of Google’s advertising services?

For copyright, last year we took action on our own initiative against nearly 12,000 sites for violating our policy against using AdSense for sites infringing copyright. In 2011, we have already taken action against more than 12,000 sites, and we have certified our compliance with IAB’s guidelines. As described above, 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.

Google also 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.



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.



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 a 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.