

Testimony of Google Inc.
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The Internet enables consumers to make better health care decisions. It gives consumers access to more information and options when considering medical and pharmaceutical products and services. At the same time, the Internet has brought access to a range of unsafe products, such as those offered by rogue, unlicensed, online drug-merchants. Google shares this Subcommittee's concerns regarding the online availability of dangerous, illegal, or illegally obtained drugs. To do our part, Google has taken strong voluntarily measures—going beyond existing legal requirements – to ensure that our advertising services protect our users by providing access to safe and reliable information.

Google allows only licensed pharmacies and pharmacists, verified through a rigorous third-party process, to display advertisements in the United States. In the following testimony, we explain Google's advertising platform, and detail our third-party verification program for online pharmacy advertisers. In addition, we offer our views on pending legislation in this area.

About Google

Organize the world's information and make it universally accessible and useful. This is Google's mission statement and guiding principle. When you visit www.google.com or one of our 95 other domains, you are able to search in 90 different languages across more than 4 billion webpages and more than 880 million images. Google's utility and ease of use have made it one of the world's best known brands almost entirely through word of mouth from satisfied users.

Don't be evil. Focus on the user and all else will follow. These are the core values on which the Google culture is built. By placing the interests of the user—an individual performing a search on our site—first, Google has created useful services and built a loyal user base. We are dedicated to preserving and strengthening the trust our users have placed in us, even when it means sacrificing a current or future financial advantage for our company. Google's policies regarding pharmaceutical advertising flow from our commitment to our mission, our values, and our dedication to do our best to serve our users' interests.

Google's Advertising Products

In 2000, Google added advertising to complement our growing search services business and to provide another method for users to find pertinent and useful information easily on the Internet. In entering the advertising market, Google tested our belief that highly relevant advertising can be as useful as search results or other forms of content. Our advertising has the same aim as our search results: give users information they will find useful.

Google first built an advertising system for search. When a user searches on a keyword, advertisers may bid to be placed next to the search results for that keyword. For example, when typing the word 'flowers' into the search box, relevant search results will appear accompanied by relevant advertisements about flowers displayed along the right-hand side. Google then extended the search advertising platform to provide highly-relevant ads for any website with content. Here's how it works: Google's system analyzes the content of a partner's web page to determine which advertisements would likely be relevant to the content; based on that analysis, the Google system selects relevant ads to appear on the page. The result is that advertisers can match their advertising to broader content concepts, allowing their ads to reach a wider audience through many different channels beyond the Google website.

We offer our advertising technologies to advertisers as part of our AdWords™ service and to publishers of websites through our AdSense™ service.

Google AdWords™

Launched in autumn 2000, Google AdWords allows any potential advertiser—from a neighborhood drycleaner in Duluth to an automaker in Detroit—to easily create text- or image-based ads and to display them online in a targeted manner. AdWords is principally a self-managed program, meaning that most advertisers create and control their advertisements through an online interface.

Google's advertising ranking algorithm aims to target ads according to relevance, so that we show only ads that our users will find useful. The AdWords system monitors in real time how well each ad is performing in order to calculate the relevance of a given ad or keyword to the user. An ad's performance is measured largely in terms of its clickthrough rate, a measure of how often the people who view the ad click on it. The most relevant, and therefore the most useful, ads are displayed more prominently and more frequently; conversely, ads and keywords with consistently low clickthrough rates may not be shown. Our focus on relevance means that an advertiser cannot secure top ad placement in the AdWords program simply by paying more—rather, advertisers have every incentive to make their ads as relevant to users as possible.

Google AdSense™

In 2003, we expanded the reach of AdWords through a new service called Google AdSense. AdSense is a program that permits website publishers to deliver relevant ads generated by Google on their own sites, and thereby to earn money every time a user clicks on one of those ads. AdSense gives web publishers of any size—from an individual weblogger or hobbyist to a global news site—a powerful new means to generate revenue and to enhance the user experience on their sites. AdSense essentially allows anyone who publishes through a website to become part of the Google Network, to include relevant, targeted, unobtrusive Google ads on their webpages, and to earn shared revenues when readers click on them. Like AdWords, AdSense is largely a self-managed program, allowing even the smallest of web publishers to participate.

Google Standards and Policies

The AdSense and AdWords services employ numerous automated and manual checks, program policies, and enforcement mechanisms to provide our users, publisher partners, and advertisers with advertising services that are high-quality and relevant.

Google recognizes that the success of any of our products ultimately depends on quality. We have therefore implemented rigorous quality standards for all our ads, and have developed a range of tools to help our users and publishing partners identify the advertising content that's right for them. For example, most Google ads on AdSense partner websites display an "Ads by Google" label, which links to a feedback form. Through this form or by an email to customer support, users are invited to report poorly targeted ads or ads they may find objectionable.

From the launch of our advertising services, in keeping with our company values and mission, Google has had policies restricting the types and content of advertising we accept. The policies and Terms and Conditions for AdWords and AdSense are posted online, addressing editorial, content, and usability issues.¹ Advertisers, their advertisements and the websites to which they point must adhere to these standards as a condition of joining and continuing to participate in either program.

Some of these policies prohibit specific forms of online advertising. For example, we have never supplied pop-up advertising, nor do we permit pop-up windows to be launched from clicking on the link in the ads. Other policies relate to the nature of what is being advertised. For example, we do not allow the advertising of tobacco or tobacco products, regardless of its legality in the different jurisdictions in which we serve advertising. Other policies are editorial in nature. For example, we do not accept AdWords ads containing potentially misleading content.

¹ AdWords Terms and Conditions are available at <<https://adwords.google.com/select/tcsandcsfinder>>. AdWords Editorial Guidelines are available at <<https://adwords.google.com/select/guidelines.html>>. AdSense Terms and Conditions are available at <<https://www.google.com/adsense/localized-terms>>. AdSense Program Policies are available at <<https://www.google.com/adsense/policies>>.

Enforcement of Google's Standards and Policies

The AdWords system begins performing automated policy checks as soon as an advertiser submits an ad. Ads entered through our online system are subject to real-time automatic screening for potentially sensitive or objectionable terms, as defined in our policies. If the ad and its list of associated keywords pass this automated screening process, it will be displayed initially on the Google website. If not, the ad is flagged for further review by Google staff, and will not appear anywhere until it has been reviewed and approved.

All ads and keywords must eventually pass review to ensure that they meet Google's advertising standards. Only ads that have passed review are permitted to run in the Google Network, which includes not only Google's own website, but also the sites and products of our AdSense partners.

Google's Online Pharmacy and Pharmacist Policy

Our users want information about pharmaceuticals, and we know that providing relevant information from trusted sources can be critically important. We have received numerous e-mails from users who have found life-saving information through Google's search and advertising results. We handle many queries every day from users looking for information about pharmaceuticals—how they work, what they do, where to fill prescriptions for them, and so on. Google's role is to make relevant information available, whether for a homebound patient searching for access to prescribed medication or for a doctor looking for diagnosis and treatment indications beyond what can be found on her shelves. Relevant, trustworthy advertising has a role to play helping all of these users.

Google believes that our users benefit from advertising by licensed pharmacies and pharmacists, addiction treatment and detoxification centers, pharmaceutical manufacturers, and other organizations relating to pharmaceuticals. Our belief is supported by research showing that pharmaceutical-related advertising is strongly positive for consumers. For example, a survey published in *Prevention Magazine*² indicates that pharmaceutical-related advertising allows patients to be more involved with and make better-informed decisions regarding, their treatments. The survey supports the general consensus that direct advertising can help empower consumers to participate actively in the assessment and treatment of their ailments. Likewise, a study by the Food and Drug Administration on pharmaceutical advertising and communications documented a prevalent view among physicians that the increased consumer awareness brought about by pharmaceutical-related advertising has a beneficial effect on patient diagnosis and treatment.³

Advertising by licensed pharmacies and pharmacists helps consumers locate services, compare among options, and make cost-effective choices when tending to their health. For all these reasons, Google is strongly committed to providing its users with information about pharmaceuticals, pharmacies, and pharmacists.

Of course, pharmaceutical advertising carries some risks along with its benefits. We recognize that there are bad actors on the Internet, including unlicensed online pharmacies that peddle unsafe and counterfeit products. We have been working hard to implement policies that will protect our users from encountering these dangerous rogue pharmacies through our advertising services.

Google's Approach: Third-Party Verification

As the online pharmaceuticals market has become more complex, Google has taken proactive steps to ensure that information going from our advertisers to our users and partners is as relevant, useful, and trustworthy as possible. In the context of pharmacies and pharmacists, Google has voluntarily embraced and implemented third-party verification.

In order for an online pharmacy to advertise with Google, it must establish, to the satisfaction of a trusted third-party verification service, that both the pharmacy and its pharmacist are properly licensed; that the Internet website associated with the ad is owned by the licensed pharmacy; that it will not dispense prescription drugs without receiving and verifying a lawful and valid prescription from a personal practitioner; and that it will perform age verification for all prescriptions, among other requirements.

² *Prevention Magazine*. International Survey on Wellness and Consumer Reaction to DTC Advertising of Prescription Drugs, 2000/2001.

³ Available at: <http://www.fda.gov/cder/ddmac/globalsummit2003/>

In practical terms, this means that online pharmacy advertisers must be members in good standing of the SquareTrade Licensed Pharmacy Program and must meet all other conditions of the Google AdWords Online Pharmacy Qualification Process.

SquareTrade Licensed Pharmacy Program

SquareTrade is a leading online trust infrastructure company. Its Licensed Pharmacy Program has been reviewed and approved by the National Community Pharmacists Association (NCPA).⁴

How the Program Works

SquareTrade verifies that the online pharmacy and its pharmacist are licensed by an appropriate governmental entity, and requires that members commit to industry- and NCPA-approved practices, which include compliance with all laws and regulations in the jurisdiction where the pharmacy is located as well as the jurisdiction where the buyer is located. SquareTrade regularly monitors the licensure status of member pharmacies and their pharmacists and will investigate disputes or complaints against a member pharmacy. If a change in SquareTrade member status occurs, SquareTrade notifies Google so that we may take appropriate action.

SquareTrade has a multi-step verification process to confirm that the online pharmacy is appropriately licensed. To begin with, the licensing information of both the pharmacy and the pharmacist is verified with the state or federal licensing body, a process which is repeated every three months. After this has been completed, the pharmacy is called at its number on record to confirm employment of the pharmacist, who must then go through an identity verification process, either by providing his/her Social Security Number and going through a credit header check or by providing copies of two government issued pieces of identification. As a final check, the ownership of the website by the pharmacy is confirmed, and, if the online pharmacy meets all required criteria, two physical letters are sent to the pharmacy, one addressed to the pharmacist and one addressed to the Head of Finance of the pharmacy, confirming the application and their obligations.

The SquareTrade Licensed Pharmacy Program requires its pharmacies to adhere to a stringent set of conditions that are designed to protect consumers against dangerous online practices. SquareTrade-certified pharmacies must agree to full compliance with all applicable laws, rules, regulations, and accepted industry standards of ethical business conduct. The SquareTrade program is only open to online pharmacies based in the U.S. or Canada.⁵ A SquareTrade-certified pharmacy must also, at all times, employ a licensed pharmacist in charge of its pharmacy and only permit licensed pharmacists to dispense prescription drugs. A certified pharmacy is required to notify SquareTrade immediately if one of its pharmacists becomes the subject of adverse government or other regulatory action relating to its licensure or the dispensing of prescription or controlled substances.

SquareTrade-certified pharmacies must agree to a series of requirements relating to the dispensing of prescription drugs. For example, they cannot provide prescription drugs without receiving and verifying a lawful and valid prescription from the customer's personal healthcare practitioner, and further, must ensure that the prescription was not obtained via an online or telephone consultation only. SquareTrade-certified pharmacies are required not to dispense any controlled substance in violation of state or federal law or without verifying the prescriber's current DEA number and conducting age verification. Finally, to qualify for SquareTrade certification, a pharmacy must agree that deliveries of prescription drugs will be made only through U.S. mail or a delivery service that requires the signature of an adult for package delivery.

SquareTrade issues a patented electronic seal to licensed pharmacies. This electronic seal has the licensure information of the pharmacy embedded into it, ensuring that consumers have transparency and visibility into why the pharmacy is

⁴ More information about SquareTrade is available at <<http://www.squaretrade.com>>.

⁵ While licensed Canadian pharmacies are permitted to obtain SquareTrade certification, they are also required to agree that they will not target US consumers, whether by providing shipping rates and information, by comparing the efficacy of Canadian drugs to FDA-approved drugs, or by any other means that would lead a US consumer to believe that s/he can purchase pharmaceutical drugs from Company's website. Canadian pharmacies must also put a disclaimer on the home page of their website that states: "The FDA, due to the current state of their regulations, has taken the position that virtually all shipments of prescription drugs imported from a Canadian pharmacy by a U.S. consumer will violate the law."

legitimate. If a user clicks on the online pharmacy's SquareTrade seal, the user is able to review the SquareTrade Seal Member Profile, allowing them to confirm the pharmacy's participation in and commitment to the program.

Together, these requirements mean that U.S. consumers will not be confronted with unlicensed, rogue pharmacies or pharmacists through Google advertising services. Through these voluntary steps, Google is proud to be taking strong action to protect its users.

The Benefits of the Google / SquareTrade Partnership

Google makes every effort to provide an advertising service that is effective for advertisers and to supply information that is useful to our users. Our emphasis on technological innovation and ad relevance helps us reach the goal of effectiveness. Reaching our second goal, usefulness, depends in part on our ability to verify that our pharmaceutical advertisers are licensed and trustworthy and remain so throughout the course of their relationship with Google. This is SquareTrade's area of expertise.

SquareTrade provides the resources and experience needed to implement Google's pharmacy-related advertising policies on a consistent and sustainable basis without compromising our ability to focus on our search technology and advertising programs. Our partnership with SquareTrade allows each company to focus on what each does best. As a result, we permit only licensed pharmacies to advertise through Google, allowing us to say with confidence that we are providing a means by which individuals in need of education, rehabilitation, or medical care can find the information they seek and can trust that it comes from a reputable source.

The Google Online Pharmacy Qualification Process

It may be helpful to explain in some detail how Google has integrated the SquareTrade Licensed Pharmacy Program into our advertising systems.

Most importantly, to have its ads appear in the United States or its territories an online pharmacy must provide Google with a valid SquareTrade I.D., certifying its licensing status and agreement to operate in a legal and responsible manner. In addition to the requirements of the SquareTrade Licensed Pharmacy Program, Google's own advertising policies impose further requirements on online pharmacy advertisers. For example, websites advertising prescription drugs or using prescription drug names as keywords must clearly state the prescription requirement. Google prohibits the advertisement of certain non-FDA-approved drugs such as Ephedra, Lipostabil, and Sildenafil Citrate.

We monitor all AdWords ads and keyword lists including drug-related terms. Ads that contain certain restricted drug-related terms will not appear to users until they have been reviewed by a Google client service representative. After reviewing the ad, the client service representative will either approve or reject the ad, according to Google's policies for online pharmacy advertisers.

Moreover, Google's policy is to reject ads or sites promoting controlled substances or any items that are primarily intended or designed for use in manufacturing, concealing, or using a controlled substance. References to certain Schedule I and II substances are closely monitored. Drug-related keywords may be approved if they are for ads and websites marketing addiction treatment and rehabilitation services, provided that illegal drugs aren't being marketed as a means of treatment.

The list of drugs and drug-related terms is updated regularly based on publicly available information found in a number of sources, including the news and drug names and schedules detailed within the Diversion Control Program web pages of the Drug Enforcement Administration website.⁶

The Evolution of Google's Current Pharmacy Policy

Google has monitored and enforced policies on all drug-related ads and keyword lists since the AdWords service was first launched. In mid-2003, Google began requiring online pharmacies to clearly state on their websites that a prescription from a licensed physician was required to obtain prescription pharmaceuticals. A team of Google representatives has since been dedicated to enforcing all aspects of Google's online pharmacy policies. Toward the end of 2003, in response to user feedback and our commitment to improving advertising quality, we began developing a new policy requiring

⁶ Available at <<http://www.deadiversion.usdoj.gov>>.

pharmacy-related AdWords advertising to pass even more rigorous quality checks. As part of that process, we evaluated several companies that could provide third-party verification services to help us ensure policy compliance. During this time Google also talked with staff at the Federal Drug Administration about our intended policy changes and received strongly positive feedback, especially on our plan to implement third-party verification.

Based on a number of factors, including specific experience and ability to scale, Google selected, in January 2004, SquareTrade L.L.C. as the trusted third-party vendor for verifying online pharmaceutical advertisers. In April Google and SquareTrade reached an agreement and signed the contract establishing the SquareTrade Seal Program for Google online pharmacy advertisers. Once the contract was signed, Google engineers immediately began work on an automated system to block pharmacy advertisers without a SquareTrade I.D. from running ads in the United States and its territories.

The implementation of the SquareTrade certification requirement has proceeded rapidly; however, for a system as large and complex as Google's, it has proven technically challenging. When, in early May, 2004, engineers working on the automated system encountered technical obstacles that would delay the implementation, Google deployed an interim solution to accelerate the launch of our revised online pharmacy policy. Leveraging some of the engineering work, we were able to begin identifying and then manually suspending existing advertising campaigns by online pharmacy advertisers that had not yet been certified by SquareTrade. The process of checking existing accounts was completed in June, and we then instituted a short-term manual process for identifying new advertisers as online pharmacies or pharmacy affiliates.

Google has worked diligently to implement the new Pharmacy Qualification Program, and has devoted considerable human resources to consistently identify and address all online pharmacy advertisers that are subject to the policy.

The Future of Google's Online Pharmacy Policy

Google's objective is to ensure that our customers, advertisers, and partners have a trusted marketplace for information about online pharmacies. The introduction of the AdWords Online Pharmacy Process has taken us a step closer to that goal. The next phase is to finish building and implementing our fully-automated pharmacy policy monitoring system.

The automated system will identify pharmaceutical-related advertisers before they even create their first ad. When the system identifies an advertiser as an online pharmacy attempting to run ads in the United States or its territories, the AdWords interface will immediately present the advertisers with several options, including the option to submit a valid SquareTrade I.D. Only if the advertiser has been SquareTrade-certified will the ads appear before human review.

Without a valid SquareTrade I.D., the advertiser will be able to set up an account, but will not be able to run an ad until the advertiser submits a valid SquareTrade I.D., or a client service representative reviews the account and determines that a SquareTrade I.D. is not needed. For example, informational medical sites, addiction treatment and detoxification facilities, and drug rehabilitation support groups may advertise and are not required to obtain a SquareTrade I.D.

Google strives to achieve consistency and accuracy in the implementation all of our policies. We will continue to work on improving our systems and processes in order to provide the optimal user experience with the greatest benefit to our users, our partners, and our advertisers.

Comments on Pending Legislation

In connection with today's hearing, I would like to offer some brief comments on two legislative proposals currently pending before the Senate: S. 2464 (the "Internet Pharmacy Consumer Protection Act"), offered by Senator Coleman and co-sponsored by Senator Feinstein; and S. 2493 (the "Safe IMPORT Act of 2004"), offered by Senator Gregg and co-sponsored by Senators Smith, Collins, Coleman, Sessions, Lott, and Enzi.

Though these two bills are quite different in scope, objective, and approach, both contain provisions that relate to neutral Internet information services like Google. As a provider of Internet-based information tools, Google has no position on the broader merits of the drug importation debate, or on the optimal mechanisms for regulation of online pharmacies; rather, our interest is to preserve the ability of Internet users to find useful and relevant information, including information about licensed pharmacies.

Let me preface my specific comments by noting that Google has been working closely with the staffs of Senators Gregg, Coleman, and Feinstein to present our concerns and, in the case of S. 2493, to suggest some effective potential alternatives. We commend those Senators and all the members of this Subcommittee for proceeding in an open and

collaborative manner. We understand that there will likely be some changes in S. 2493 to address, at least in part, our concerns. The comments that follow are based on the last published versions of the bills available at the time my testimony was submitted; those versions may well be outdated by the time of today's hearing.

In the context of pharmacy advertising, we believe that society benefits when patients with valid prescriptions can look to Google's advertising service as a way to find properly licensed pharmacies that can legally fill their prescriptions in accordance with industry best practices. Measured against that objective, Google believes that S. 2464 (Coleman/Feinstein) embodies a sensible, thoughtful, and carefully-drafted approach to Internet information and advertising services. However, as currently published, Google believes that the provisions of S. 2493 (Gregg) are so burdensome that they could force Google to consider dropping all pharmacy-related advertising, including from licensed pharmacies— thereby depriving those with valid prescriptions of a useful tool to find legitimate, law-abiding pharmacies.

In particular, I'd like to highlight two provisions in S. 2464 that Google believes should be included in any online pharmacy legislation. The first is the explicit recognition that an "Internet information location tool" should not be treated as an online pharmacy. The second is the strong, common-sense liability protection for neutral Internet intermediaries, stating that providers of interactive computer services and advertising services should not be held liable for the illegal selling or dispensing of prescription drugs when they had no ownership or control over those that actually sold or dispensed the drugs.

In contrast, the currently published version of S. 2493 would make a provider of interactive computer services or advertising services directly liable for the illegal prescribing of drugs if it ever (1) "accepts advertising for a prescription drug from an unlicensed pharmacy," or (2) "accepts advertising stating that an individual does not need a physician's prescription to obtain a prescription drug." While Google's own policies provide, without ambiguity, that we do not accept either type of advertising, the risk to Google of making even a single mistake would be serious. The bill contains nothing to mitigate this liability threat. For example, there is no safe harbor for reasonable and reasonably-enforced policies, or for violations that might occur when rogue advertisers intentionally evade those policies.

In addition, S. 2493 would effectively prevent advertising services like Google from utilizing third-party verification services like SquareTrade. The bill would require Google to have "on file a copy of the license issued to the Internet pharmacy." Google would thus be forced to should the administrative burden of gathering, verifying, storing, and updating pharmacy licenses from its advertisers. These are precisely the tasks that Google has contracted with third-party verifier SquareTrade to provide.

If subjected to the burdens imposed in S. 2493 (mandatory in-house verification of advertisers' licenses, plus strict liability for any errors or circumvention of policies), Google would have to give strong consideration to simply blocking all online pharmacy- and pharmaceutical-related advertising – including ads by licensed pharmacies; addiction treatment, detoxification and rehab sites; and drug information sites. We think that would be bad public policy.

With our SquareTrade third-party verification protections in place, Google provides a valuable information service that allows those with valid prescriptions to find, compare, and select from among properly licensed online pharmacies that are legally authorized to fill the prescriptions. We think that making it easy for Internet users to find licensed pharmacies is a key part of the overall solution to the problem of rogue pharmacies, and we urge the United States Senate to avoid burdensome liability schemes and impractical requirements, and to give workable protections – as has consistently been done in other federal laws relating to the Internet – to neutral interactive service providers and advertising providers.

Conclusion

While there are many complicated issues relating to online pharmaceutical sales, Google has taken decisive steps to ensure that we protect our users. Though our SquareTrade program, we make sure that the only pharmacy ads we display in the United States are from properly licensed pharmacies that are legally authorized to fill prescriptions in the United States. Google believes strongly that the Internet is a valuable resource that can provide individuals with crucial information needed to make informed health care decisions. At the same time, we are proud to have taken a leadership role in improving the quality and safety of online prescription drug advertising.

Thank you for the opportunity to share our views on the important issues addressed by this hearing. We appreciate the committee's attention to these issues and hope that this testimony has been helpful.