



**Testimony  
of  
JOHN M. SIMPSON  
Consumer Advocate  
with  
CONSUMER WATCHDOG**

**Hearing on  
THE POWER OF GOOGLE  
*SERVING CONSUMERS OR THREATENING COMPETITION?***

**Submitted to the  
Judiciary Committee  
Subcommittee on Antitrust, Competition Policy and Consumer Rights  
of the  
United States Senate  
Sept. 21, 2011**

Thank you, Chairman Kohl, Ranking Member Lee, and members of the committee for considering my written testimony. My name is John M. Simpson and I am a consumer advocate with the nonprofit, nonpartisan public interest group Consumer Watchdog. I direct our group's Privacy Project. We have been calling for Google Executive Chairman Eric Schmidt to testify before Congress for a year and a half and are grateful the Subcommittee has scheduled this hearing.

Established in 1985, Consumer Watchdog is a nationally recognized nonpartisan, nonprofit organization representing the interests of taxpayers and consumers. Our mission is to provide an effective voice for the public interest. Consumer Watchdog's programs include health care reform, oversight of insurance rates, energy policy, protecting civil justice, corporate reform, and political accountability.

**Background**

When Consumer Watchdog launched our Privacy Project, funded by The Rose Foundation, a charitable nonprofit organization, in 2008, we focused on Google's privacy practices and sought better privacy guarantees from the company for users of its services. Rather than deal in abstract concepts, the Privacy Project focused on Google as the company that has

come to dominate consumers' use of the Internet. In fact, Google is so pervasive on the Internet its reach cannot be escaped.

We have attempted to convince Google of the social and economic importance of giving consumers control over their online lives. By persuading Google, the Internet's dominant company, to adopt adequate privacy guarantees, we believe its policies could become the gold standard for the industry, improving the behavior of the entire online sector.

The Privacy Project has since moved beyond its singular focus on Google to confront the abuses of other online companies as well. Consumer Watchdog has promoted federal online privacy legislation that would include a Do Not Track Me function and has worked to educate consumers about how Internet companies gather and use personal information. We sponsored a Do Not Track Me bill in the California Legislature, and have brought various possible privacy and antitrust violations to the attention of the Federal Trade Commission and the Department of Justice.

During this project we became aware of the proposed Google Books class action settlement and were concerned about its impact on consumer privacy and its anticompetitive aspects. In April 2009 we called upon the Department of Justice to intervene in the proposed settlement and it subsequently intervened, successfully blocking the deal as proposed to the court. We also unsuccessfully opposed Google's acquisition of the mobile advertising company AdMob on antitrust grounds.

### **Consumer Watchdog Calls For Antitrust Investigation**

Consumer Watchdog's opposition to the Google Books settlement was based on the monopoly control of digital books that the settlement would have given Google. The company had scanned works under copyright without asking permission, while others had followed the law. Under the agreement Google would have had control of a huge digitized database of books that competitors would not have been able to access.

While contemplating this potential monopoly over digitized books, it became clear to us that Google has much broader monopoly power because of the unprecedented amount of data the company has gathered about its users. Its information – or more accurately consumer information often gathered without consumer permission – is the basis for Google's power. By April 2010 we were convinced it was necessary to move beyond considering the anticompetitive aspects of Google's ever-growing number of acquisitions on an ad hoc, case-by-case basis, and examine the Internet giant's core ongoing business practices because of its power over the entire Internet. We called on the Justice Department to launch an investigation.

Thus, we were gratified this summer when the Federal Trade Commission announced just such a full-blown probe. In addition, we have consistently supported this Subcommittee's efforts to examine Google's behavior. Consumer Watchdog especially applauds your insistence that Eric Schmidt, Google CEO for most of the past decade, answer your questions. We also strongly believe that the current CEO, Larry Page, should appear before the Subcommittee in the near future to explain how and why he condoned Google flouting the law regarding drug sales to the United States from Canadian pharmacies. Google's abuses in this case resulted in a record \$500 million settlement with the Justice Department to avoid criminal charges.

Google derives monopoly power from both its dominance of search and from the consumer data that the company gathers as people surf the web. The time is long past for federal action to actively restrain Google's broad ability to abuse users, competitors and advertisers. Such action could include breaking Google Inc. into multiple separate companies, regulating search as a public utility and requiring the company to allow consumers to opt out of data tracking.

### **Search Dominance and Bias**

Google exerts monopoly power over Internet searches, controlling around 70 percent of the U.S. market. For most Americans – indeed, for most people in the world – Google is the gateway to the Internet. In the mobile market Google's monopoly power is even greater. It controls more than 95 percent of mobile search. Android, Google's smartphone operating system, dominates the mobile market with 38 percent of the market. Apple's iPhone has 27 percent.

Google's dominance of the search market forces advertisers to use Google's advertising products – those that do not will not reach their customers. How Google tweaks its proprietary search algorithms can ensure a business's success or doom it to failure. Google's business practices determine much of the Internet experience for most consumers by determining what they view. Google demands openness of others, but when it comes to its own activities that can spell success or failure to millions of businesses small, medium and large, it is a closed black box.

Our study, *Traffic Report: How Google is Squeezing out Competitors and Muscling Into New Markets* (<http://insidegoogle.com/2010/06/google-using-search-engine-to-muscle-into-internet-businesses-study-finds-2/>) shows how with the launch of Universal Search Google favored its own properties and services in search results to the detriment of its competitors. One stark example is the dramatic drop-off in traffic that occurred on Mapquest's site after Google placed its Google Maps at the top of Universal Search.

Google uses a third-party payment business model. Its ad prices are completely separated from the users of search. But because Google commands such a substantial share of the search market, many companies must pay for listings to remain viable. The reality is that for many small online vendors Google is the only way to develop traffic to their services. Google's dominant search position allows it to charge high ad prices and it uses these monopoly revenues to subsidize other lines of business. Of course, consumers ultimately pay these monopoly ad prices when they pay higher prices for the goods and services advertised.

Other companies find it difficult, if not impossible, to compete with Google in offering the products Google provides for “free” with the subsidies generated from its monopolistic search revenues. This becomes a vicious circle when Google uses these “free” products as yet another vehicle to sell advertisements. The inability of potential competitors to enter these subsidized markets stifles innovation.

Once Google's self-proclaimed mission was to organize the world's information and make it universally accessible. Increasingly, however, Google is buying the information itself or otherwise controlling content. A recent example is the just-announced purchase of Zagat. Google has become a true content provider, which means it has a fundamental conflict of interest

in an attempt to provide unbiased search results. There is simply too much incentive for Google to favor its own services and products.

Moreover, to the extent that Google manipulates search algorithms, engages in conduct that trims its auctions or otherwise denies competitive alternatives, users plainly are harmed because they will not even have the opportunity to experience such alternatives.

### **Information Is Power**

Information is power and Google has amassed more data than anyone. How did Google gain this monopoly position in consumer personal data? Very simply. The company tracked us all around the Internet and gave us no choice over whether our data was collected or not. Google tracks consumers around the Web, logs every search query and YouTube video watched and records the location of Android smartphone users.

Google's presence on the Internet is so pervasive that consumers cannot escape its reach even if they do not use its services. Google's ad network puts down tracking cookies and records consumers activities as they surf the Internet. It is this immense database of consumer information, intentions and desires that gives the Internet giant its power.

You may think of Google as a technology company. In actuality Google is an advertising business. Consumers make a Faustian bargain, often unknowingly, to provide personal information about their habits, desires and behaviors in return for Google's services. Google mines these massive digital dossiers and uses the information to sell ads, a lucrative business that accounts for 96 percent of its \$30 billion annual revenue.

Google gives most of its services away for "free." Its billions of dollars in monopoly revenues fund those services, undercut competitors and thwart innovation. These "free" products and services serve as new avenues for the company to collect more consumer information.

Every platform the company buys expands its database of information on individuals. More consumer data means more information to target individuals in the ad server market. Every piece of information that is added to that database makes Google's ad targeting that much more sophisticated – in turn making it a must have for companies seeking to target advertising. The better Google's data, the more advertisers will have to go to Google to reach their audience, thus increasing its dominance of the market. If Google's unfettered absorption of companies, and the consumer information that comes with them, continues, and Google is not required to give consumers the ability to opt out of this data collection, the ever-increasing consumer information database Google is compiling will only strengthen its dominance over the ad server market.

People who use Google aren't its customers. We are the Internet giant's product. The immense database about us, largely gathered without our informed consent, is used to target ads and bring Google billions in advertising profits.

### **Google's Arrogance**

In addition to anticompetitive behavior that runs afoul of antitrust laws, Google has repeatedly displayed an arrogant approach that has too frequently harmed consumers. Operating with a Silicon Valley engineering ethos, Google doesn't seek permission; if it encounters objections it can ask forgiveness. Consider Google Books. When Google decided to digitize the

world's books, Google just did it, ignoring copyright law and prompting a still unsettled lawsuit. Often executives will answer questions about their actions by citing the corporate motto, "Don't be evil," insisting that all Google activities therefore are above criticism. The record shows otherwise.

As mentioned above Google has just paid a record \$500 million settlement to avoid criminal prosecution for its role in selling drugs illegally from Canada. CEO Larry Page knew about and condoned the practice. He and Eric Schmidt must be called upon to explain how this happened. Why did Google executives believe they could flout the law for nearly six years?

In February we released a report, *Liars and Loans: How Deceptive Advertisers Use Google* (<http://www.consumerwatchdog.org/resources/liarsandloansplus021011.pdf>) showing how Google has become a leading purveyor of ads by scammers who prey on struggling homeowners. In a complaint to the Federal Trade Commission Consumer Watchdog wrote, "Because Google so far has turned a blind eye to these fraudsters, perhaps because of the substantial revenue such advertising can generate, we ask that the FTC investigate Google's role as a facilitator of deceptive and fraudulent advertising and act to prevent the Internet giant from continuing its harmful behavior."

The complaint was written before Google's \$500 million drug settlement with the Justice Department. Now that it's clear CEO Larry Page condoned those illegal drug sales, the question is, what other illegal activities do he and other Google executives condone? We have renewed our request to the FTC to investigate Google's role in offering the questionable real estate ads in light of what the drug settlement revealed about the company's willingness to flout the law. What other deceptive, illegal and harmful ads is Google willing to offer in the quest for greater profits?

When Google launched its ill-fated social network, "Buzz," it brazenly made Gmail users' frequent contacts public. That resulted in an \$8 million class action settlement and an agreement with the FTC for privacy audits of the company for the next 20 years.

In what was the biggest wire-tapping incident in history, Google's "Street View" cars sucked up information from private Wi-Fi networks in more than 30 countries during a three-year period. Google claimed the "Wi-Spy" incident was a mistake. The claim is unbelievable when you consider that Google had applied for a patent on the technique used to gather the information. Executive Chairman Eric Schmidt and CEO Larry Page must give a full accounting of what happened and why. Among the questions about Wi-Spy Schmidt should answer are:

- Google has claimed the "Wi-Spy" data was collected by accident. Will Google publicly disclose full documentation, including planning, personnel and oversight of the project, that could prove or disprove this claim?
- How does the company explain seeking a patent on the process that was used to gather the data if it was, as the company claims, collected by mistake?
- How many Americans' private information was collected by Google?
- What kind of information was collected? Emails, passwords, financial information, medical data, searches, videos? What else?
- Will Google assure the American people that it will never again collect and store consumers' private information without their knowledge and consent?

Google Chairman Eric Schmidt has said: “I actually think people don’t want Google to answer their questions. They want Google to be telling them what they should be doing next.” This shows the depth of Google’s and Schmidt’s arrogance. They actually believe that consumers would prefer Google make choices for them, rather than make those choices themselves.

## **Remedies**

On the one hand search needs to be regulated like the public utility it is. On the consumer side, consumers must be given effective control over their data – whether it’s collected and how it’s used. Do Not Track rules are the way to do that.

If we take those two broad steps– and don’t accept Google’s claims that everything it does is about the user – competitors and consumers will both be well and fairly served. We will also see better and increased innovation in Silicon Valley.

There is little doubt that Google is succeeding in its audacious corporate mission “to organize the world’s information and make it universally accessible and useful.” The unprecedented database it has collected has given Google monopoly power over that mass of information and the company has shown itself willing to use that power against competitors. Google’s mission also puts Google directly at odds with our privacy rights, and Google appears unwilling to give consumers enough control of their data. There are solutions:

- One possibility would be to break Google into different companies devoted to different lines of business. Search could be separated from advertising. Gmail and the new social networking service, Google +, could be spun off as a separate entity, as could YouTube, a Google acquisition that should have been denied at the time of merger. Enterprise applications could be another separate business.
- Google’s search engine’s importance as a gateway to cyberspace requires a maximum degree of openness and transparency with the potential for government regulation. Google’s monopoly position and importance to the Internet means that the company should be regarded as a public utility and regulated. Regulations could be designed to open up Google’s ad platform to enable other competitors to compete. Rules could be crafted to create greater transparency in the operation of Google’s ad platform to enable parties to negotiate more effectively. For example: Providing greater visibility into the maximum amount of the highest bid, how many search terms are shown per page, and how Google’s “quality score” is derived and applied. Little, if any, of this information is currently public and openness would contribute to consumer choice and options as well as foster competition.
- Another remedy would be to force Google to disgorge its monopolistic gains through the imposition of financial penalties. The payment would have to be significant enough to impact Google’s future behavior. Google hardly blinked when it paid half a billion to settle the illegal drug sales case. Perhaps the amount could be tied to paying back consumers for monetizing their private information and content without asking them permission or compensating them.

The Internet is too important to allow an unregulated monopolist to dominate it. To ensure that no online company can have an unfettered ability to exercise monopoly power with our data, we must have the right to control how data about our online activities is used or if it is even gathered.

Strict application of antitrust law will thwart Google's most flagrant anticompetitive practices. Do Not Track Me regulations will loosen Google's powerful grasp on the Internet and give consumers the true control over their online activity that they deserve.