

# OPENNESS & THE INTERNET

The role of transparency  
in online search and  
search advertising



## Foreword

I am delighted to introduce the first in a series of ICOMP whitepapers that will explore key issues related to the operation of the online marketplace. This first whitepaper will take a close look at the extent to which the operation of the search advertising marketplace is open and transparent to advertisers and publishers. ICOMP's members believe this issue is of central importance as it is online advertising that makes possible many of the free services that the public enjoys online today. In the case of advertisers, openness, transparency and accountability are particularly important as online advertising commands an ever-growing share of overall marketing spend. At the same time, publishers depend on these revenues to fund the creation of quality online content.

The digital world continues to develop at phenomenal speed and is making a huge contribution to society and humankind. However, there is a growing concern amongst ICOMP's members that material imbalances in the search advertising marketplace threaten to stall this vital growth engine. It is ICOMP's mission to champion key principles that it believes are imperative in order to ensure a safe and healthy online eco-system for all users. Our key campaign pillars focus on issues relating to: competition, respect for intellectual property, security and privacy. As a forum for debate for the online community, ICOMP aims to explain the complexities of the online marketplace and ask the essential questions through events and research, such as this paper.

We look forward to hearing thoughts and feedback from all readers. If you wish to join in the debate or be involved in future ICOMP whitepapers, please contact the Secretariat through the ICOMP website ([www.i-comp.org](http://www.i-comp.org)).



**Lord Watson of Richmond C.B.E**

Chairman of ICOMP

## About ICOMP

ICOMP, the Initiative for a Competitive Online Marketplace, is an industry initiative for businesses and organisations involved in Internet commerce. Its overall objective is the sustainable growth of the Internet and key goals are to encourage competition, transparency, data privacy and respect for intellectual property protection as well as the adoption of best practices to promote creativity, innovation, safety and trust.

As an organisation concerned with the Internet, ICOMP brings together companies operating in the online marketplace across content, infrastructure and services sectors to identify and promote best practices. ICOMP helps to educate and inform stakeholders and decision-makers on how the online marketplace functions and the challenges being faced by those who operate within it.

Over 50 companies, trade associations, consumer organisations and individuals are members of ICOMP and have endorsed ICOMP's principles. These members represent 14 countries across Europe, North America and the Middle East.

ICOMP is funded by member contributions as well as sponsorship from Microsoft. Burson-Marsteller acts as its secretariat.

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## I. Executive Summary

Across Europe, the migration of advertising spend to the Internet is accelerating. This trend was brought into sharp focus by new research from the Internet Advertising Bureau (IAB)<sup>1</sup> showing that the total spend on Internet-based advertising in the UK – a total of €1.85 billion – has overtaken TV for the first time. While the IAB's definition of online advertising covered email campaigns, classified and display advertising and search advertising – it is the latter category (paid search) that commands by far the largest share of total online ad spend.<sup>2</sup>

It is in this context that ICOMP's Council took a decision earlier this year to make the mechanics of the search advertising marketplace the subject of its first White Paper. The key goal of this White Paper is to question to what extent the operation of this marketplace is open and transparent to advertisers and publishers. ICOMP's members believe this issue is of central importance as it is online advertising that makes possible many of the free services that the public enjoys online today.

In the case of advertisers, transparency and accountability are particularly important as online advertising commands an ever-growing share of overall marketing spend. At the same time, publishers depend on these revenues to fund the creation of quality online content. The digital world continues to develop at phenomenal speed and is making a huge contribution to society and humankind. However, there is a growing concern amongst ICOMP's members that material imbalances in the search advertising marketplace threaten to stall this vital growth engine.

With over 30 leading industry

stakeholders and representatives from trade associations participating, ICOMP held a workshop in London on 17th June 2009 to examine concerns about online transparency. The feedback ICOMP received from this event forms the basis of this paper, which explores the role of openness and transparency within the online marketplace and the key areas of online search, search advertising and related sectors where a lack of transparency would undermine accountability and competition.

Examination of transparency in these markets is a valuable exercise for the following three reasons:

- Search serves as the gateway to the Internet for most users, and online advertising is the economic engine that supports the content those users find through search engines.
- Openness is critical to the efficient operation of online advertising. Websites and advertisers alike need access to key advertising data to make rational decisions about pricing of ads, placement of ads, and the like.
- Online search and search advertising are subject to something economists call "returns to scale," meaning that the competitive advantages enjoyed by the largest provider grow in proportion to its market share.

Due to its central role in search, search advertising and the broader online eco-system, Google in particular has attracted interest in connection with openness and transparency. This paper seeks to shed light on potential patterns of conduct and to illuminate how a lack of transparency in one area can affect the Internet as a whole. Although much of

<sup>1</sup>Source: IAB UK Press Release: Internet Ad Spend Grows 4.6%, September 30, 2009 <http://www.iabuk.net/en/1/adspendgrows300909.mxs>

<sup>2</sup>Source: IAB UK Press Release: Internet Ad Spend Grows 4.6%, September 30, 2009 <http://www.iabuk.net/en/1/adspendgrows300909.mxs>

the paper's focus is on Google – which is perhaps inevitable, given the company's dominant market share and the attention it therefore attracts – the goal of this paper is not to focus on the practices of a single operator, but instead to provide the foundation for a broader dialogue on how best to achieve greater openness and transparency in search and search advertising.

The paper examines in detail the following six key issues:

### **1. *The Role of Transparency within the Online Eco-system***

The Internet is characterised by interdependent relationships among a variety of actors, including consumers, online publishers, search engines, advertisers, video sharing sites, social networking tools, and Internet service providers. If a key actor among that mix – particularly one with market power – operates in a manner that shields it from scrutiny by the other actors, then that actor may have the ability to “game” the system in ways that reduce competition and consumer choice. Thus, parties concerned about a healthy, competitive online market increasingly seek to promote openness and transparency on the Internet.

### **2. *Pricing and Performance of Online Advertising***

Advertisers typically pay to have their ads placed among sponsored search results by bidding on relevant keywords in an auction-like process. These auctions differ from typical auctions in that price alone does not determine whether and in what order a given advertisement appears. Instead, most search engines use multiple variables to determine pricing and placement of advertising. A legitimate purpose of these algorithms is to increase the likelihood that sponsored search results

are relevant and appropriate to the search term entered by the user. For a firm with market power, however, use of undisclosed formulas to determine the pricing and placement of search advertising potentially creates opportunities for abuse.

### **3. *Rankings of Natural Search Results***

Unlike sponsored search ads returned in response to a keyword search, “natural” search results have historically been determined according to a neutral algorithm that indexes and ranks the results according to perceived relevance and other objective criteria. This distinction between natural and sponsored search results is important, as consumers trust that the natural results are non-biased and bear no relation to whether or not a site is affiliated with or otherwise favoured by the search engine. Here again, openness and transparency – particularly by a dominant firm – are important to ensuring that the search engine fulfils these expectations and does not abuse its market power.

### **4. *Interoperability/Data Portability***

Online advertisers often use multiple advertising platforms, including multiple search engines. To make this sort of coordinated effort work, advertisers need to compare and aggregate data concerning campaign performance and other metrics from various advertising platforms. This means that the data must be “interoperable” and not locked in to any one advertising platform. To what extent advertisers are able to port data is examined in this section.

### **5. *Payments to Publishers***

Most commercial websites depend on the sale of advertisements for their survival. A web publisher, much like a newspaper, typically sets aside a portion of the space on its web pages to display ads.

Websites normally have a choice to sell this ad space either directly to advertisers, or indirectly, typically through an ad network or other ad platform.

As in other contexts, openness and transparency are important to a well-functioning marketplace for the advertising space sold by online publishers. This is especially true where, as is often the case, the online publisher is not selling advertising space directly to an advertiser but rather relies upon an advertising platform.

### **6. Mechanism for Improving Transparency**

Openness and transparency have critical roles in safeguarding the health of two sectors that have proven essential to the growth of the Internet: online search and search advertising. That role is of distinct importance given the presence of a dominant firm in both of these sectors and creates special responsibilities for that firm. This paper accordingly has sought to highlight the benefits of openness and transparency and identify instances in which it may be lacking, so that stakeholders can engage in a more informed dialogue on the question of how best to promote transparency.

In summary, with this paper, ICOMP seeks to empower stakeholders to engage in a more informed dialogue as to how best to promote openness and transparency. In that dialogue, stakeholders should consider the following questions, among others:

- To what extent does a dominant firm have a responsibility to disclose the criteria used in those rankings to consumers, advertisers, and online publishers?
- Are there particular practices, such as the setting of individualised reserve

prices for advertisers, that should not be practised by a dominant search advertising platform because they create an especially high opportunity and incentive for anticompetitive practices?

- As a dominant firm moves from its core search and online advertising business into areas that put it in direct competition with advertisers or online publishers, what additional mechanisms for transparency are appropriate?
- Should a dominant firm be prohibited from restricting the ability of advertisers to manage campaigns efficiently across multiple advertising platforms?
- How important is it that a dominant firm employs consistent and predictable procedures for resolution of complaints for online publishers and advertisers?
- What is the appropriate role of government in promoting transparency and competition in online search and search advertising?

It is ICOMP's mission to champion key principles that it believes are necessary in order to ensure a safe and healthy online eco-system for all users. As a forum for debate for the online community, ICOMP aims to explain the complexities of the online marketplace and ask the essential questions through events and research, such as this paper. We look forward to hearing thoughts and feedback from all readers on this White Paper and the questions it poses. If you wish to join in the debate or be involved in future ICOMP whitepapers, please contact the Secretariat through the ICOMP website ([www.i-comp.org](http://www.i-comp.org)).

## II. Introduction

Through intensive dialogue with members and stakeholders, ICOMP found the issue of online openness and transparency to be a recurring theme. 65% said that they consider more open discussion of transparency issues and competition to be desirable and 50% told us that they think the economics of keyword-based advertising create special responsibilities for a dominant supplier of such advertising.<sup>3</sup> Many told us that they had been adversely affected by a lack of transparency in the method by which search advertisements were ranked and prices charged, the ranking of natural search results, and the determination of payments to publishers for advertising placed on their sites by search engines; case studies demonstrating this are included in the paper below and other examples are cited in footnotes throughout the paper. As a result of these discussions, ICOMP held a workshop in London on 17th June 2009 to examine these concerns with over 30 leading industry stakeholders and representatives from trade associations. The feedback ICOMP received from this event forms the basis of this paper.

Whilst the online advertising industry may at first appear marginal, in fact openness and transparency in this industry are imperative for the future health of the Internet as a whole. Online advertising supports the vast majority of free online services that the public uses today, from news sites to social networks. What happens in online advertising sends ripples across the digital world.

This paper explores the role of transparency within the online marketplace and key areas in online search, search advertising and related sectors where a lack of transparency would undermine accountability and competition – specifically the areas of pricing and performance of online advertising; rankings of natural search results; interoperability and data portability; and payments to online publishers. It also surveys some of the claims of non-transparency that have been levelled at key online actors.

Due to its central role in search, search advertising and the broader online eco-system, Google in particular has attracted interest in connection with openness and transparency. Opinions on that question range from Google's own assertion that it is "committed to choice and transparency"<sup>4</sup> to criticisms that Google operates as a "giant black box" that "many experts . . . struggle to comprehend."<sup>5</sup> Google is the world's most widely used search engine. In Europe, approximately 80 percent of all searches are Google searches.<sup>6</sup> Through its own site as well as thousands of sites with which Google has search syndication deals (e.g. The Daily Telegraph, El Mundo, etc.), Google accounts for 90 percent or more of search advertising revenue in Europe.<sup>7</sup> With such a large proportion of consumers using the Google search engine, most advertisers view Google as a "must buy" for search advertising. Competition regulators in both Europe and the United States have indicated that they consider Google to

<sup>3</sup>Figures taken from the results of an ICOMP questionnaire to members and industry stakeholders.

<sup>4</sup>Google Privacy Policy, <http://www.google.com/privacy.html>; see also Google, *The Data Liberation Front*, at [www.data liberation.org](http://www.data liberation.org).

<sup>5</sup>Miguel Helft, *The Humans Behind the Google Money Machine*, New York Times (2 June 2008), <http://www.nytimes.com/2008/06/02/technology/02google.html?pagewanted=1>.

<sup>6</sup>See, e.g. Andy Atkins-Krüger, *ComScore Reveals Google Share by Market* (30 July 2009) (displaying chart of Google's share of search market in various countries), <http://www.multilingual-search.com/comscore-reveals-google-share-by-market/30/07/2009>.

<sup>7</sup>Amanda Andrews, *Google's Dominance in Search Advertising Grows with Credit Squeeze*, The Daily Telegraph (UK) (12 Nov. 2008), <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/3248303/Googles-dominance-in-search-advertising-grows-with-credit-squeeze.html>.

be dominant in search advertising and/or related markets.<sup>8</sup>

This paper seeks to shed light on potential patterns of conduct and to illuminate how a lack of transparency in one area can affect the Internet as a whole. Although much of the paper's focus is on Google – which is perhaps inevitable, given the company's dominant market share and the attention it therefore attracts – the goal of this paper is not to pass judgement on Google, but instead to provide the foundation for a broader dialogue on how best to achieve greater openness and transparency in search and search advertising. In that spirit, this paper concludes with a series of questions for further discussion and inquiry.

### III. The Role of Transparency within the Online Eco-system

The Internet is characterised by interdependent relationships among a variety of actors, including consumers, online publishers, search engines, advertisers, video sharing sites, social networking tools, and Internet service providers. If a key actor within that mix – particularly one with market power – operates in a manner that shields it from scrutiny by the other actors, then that actor may have the ability to “game” the system in ways that reduce competition and consumer choice. Thus, parties concerned about a healthy, competitive online market increasingly seek to promote openness and transparency on the Internet.

This paper focuses specifically on openness

and transparency in the areas of online search and search advertising. Examination of transparency in these markets is a valuable exercise for three reasons.

First is the importance of the search and search advertising markets themselves. Search serves as the gateway to the Internet for most users, and online advertising is the economic engine that supports the content those users find through search engines. Online advertising spending in Europe was nearly €13 billion in 2008 and, following relatively slow growth in 2009, is expected to resume acceleration in 2010.<sup>9</sup> Search advertising represents nearly half of that spend and is rising.<sup>10</sup> Many websites today offer free online access to an almost infinite variety of news, entertainment and other content, and to powerful online services, solely because of the income they receive from advertising.

Second, openness is critical to the efficient operation of online advertising. Websites and advertisers alike need access to key advertising data to make rational decisions about pricing of ads, placement of ads, and the like. Especially if a firm has market power, its refusal to supply this data may lead to market distortions or mask market abuses.

Third, online search and search advertising are subject to something economists call “returns to scale,” meaning that the competitive advantages enjoyed by the largest provider grow in proportion to its market share. This is because the search

<sup>8</sup>See, e.g. European Commission, *Case No. COMP/M.4731—Google/DoubleClick* (11 Mar. 2008) (“Google is in a very strong position in the search ad segment with market shares ranging from 50-80 % in the various Member States...”), [http://ec.europa.eu/competition/mergers/cases/decisions/m4731\\_20080311\\_20682\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m4731_20080311_20682_en.pdf); U.S. Department of Justice Press Release, *Yahoo! Inc. and Google Inc. Abandon Their Advertising Agreement* (5 Nov. 2008) (“The Department’s investigation revealed that Internet search advertising and Internet search syndication are each relevant antitrust markets and that Google is by far the largest provider of such services, with shares of more than 70 percent in both markets.”), [http://www.usdoj.gov/aip/public/press\\_releases/2008/239167.htm](http://www.usdoj.gov/aip/public/press_releases/2008/239167.htm).

<sup>9</sup>See Jack Marshall, *European Online Ad Spend Will Resume Acceleration in 2010*, ClickZ (26 Aug. 2009) (reporting on findings of IAB Europe in its annual AdEx report), <http://www.clickz.com/3634808>.

<sup>10</sup>See *BT Switches Over to Google Search Engine*, The Times (UK), 28 August 2009 (noting that revenue generated by search represents 45 percent of total online advertising revenue); Patrick Smith, *Recession Will Accelerate Shift to Online Advertising: Analysts* (10 Feb. 2009) (“[P]aid search has continually taken share from display advertising and online classifieds”), <http://www.paidcontent.co.uk/entry/419-recession-will-accelerate-shift-to-online-advertising-analysts/>.

engine with the largest user base will have the most available ad space (i.e. the most pages viewed), which will attract the most advertisers who in turn will bid up prices. Thus, as the market leader's market share grows, so does its ability to charge higher prices, generate higher profits, and buy up more of the best available advertising space. These returns to scale, whilst not in themselves abusive, do create opportunities for market abuse and can exacerbate the harmful effects of such abuse. By shining light on the practices of the market leader, however, transparency discourages such abuse and provides an opportunity for other online actors and (if necessary) regulators to seek reform when such abuses do occur.

#### IV. Pricing and performance of online advertising

When a user conducts a search on a search engine, he or she begins by entering a word or phrase (e.g. "digital camera" or "Parisian hotels") – known as a "keyword" – into the search box. Most search engines then display both "natural" search results associated with that keyword, as well as ads, or "sponsored" search results. Advertisers typically pay to have their ads placed among these sponsored search results by bidding on relevant keywords in an auction-like process.

These auctions differ from typical auctions in that price alone does not determine whether and in what order a given advertisement appears within the sponsored search results. Instead, most search engines use multiple variables to determine pricing and placement of advertising. A legitimate purpose of these algorithms is to increase the likelihood that sponsored search results are relevant and appropriate to the search term entered by the user.

For a firm with market power, however, use of undisclosed formulas to determine the pricing and placement of search advertising potentially creates opportunities for abuse. In a competitive market, advertisers would face real choices among search advertising platforms and presumably would turn to other advertising platforms if they were unhappy with, or could not decipher, the manner in which one search engine determined the pricing and performance of search advertisements. But if, as is the case today, one firm has market power, advertisers do not have the same flexibility and choice since smaller competitors often will lack the scale (i.e. number of searches) necessary to make it cost-effective for advertisers to switch their ad spending away from the dominant supplier. Similarly, the dominant supplier will face little pressure or incentive to change its practices, since it will have no need to "win business" from advertisers if they already feel they have no real choice. In such a non-competitive market, openness and transparency by a dominant firm are essential. As Michael Ostrovsky of the Stanford School of Business has explained, lack of transparency in a non-competitive search advertising marketplace means that "unsophisticated bidders can end up overpaying... and sophisticated players can end up sinking inordinate amounts of time and money into figuring out how to beat the system."<sup>11</sup>

Indeed, questions have been raised about the degree of transparency practiced by Google in its market-leading search advertising platform, known as AdWords. Much of this criticism has focused on two distinct sets of practices: the company's use of a "quality score" based on variable criteria known only to Google, and its imposition of ad hoc minimum bids (also

<sup>11</sup>Stanford Graduate School of Business News, *The High Price of Internet Keyword Auctions*, (Jan. 2006), [http://www.gsb.stanford.edu/news/research/econ\\_ostrovsky\\_internetauction.shtml](http://www.gsb.stanford.edu/news/research/econ_ostrovsky_internetauction.shtml).

known as “reserve prices”) for each keyword-advertiser combination.

- **Quality Score.** Google describes its quality score as a “dynamic variable” that “determines if a keyword is eligible to enter the ad auction ... and, if it is, how high the ad will be ranked.”<sup>12</sup> A high quality score is essential to obtaining a high rank in the sponsored search results displayed to users. Google considers the algorithm and other factors it uses to determine an advertiser’s quality score to be proprietary. It also can and does change the manner in which it calculates quality score, typically without any notice to advertisers.
- **Reserve Prices.** Google sets minimum bids – or “reserve prices” – that an advertiser must meet before Google will display its ad. Unlike an auction on eBay, in which a single reserve price is set for an object, Google imposes a unique reserve price on each advertiser and for each keyword – meaning that two advertisers with effectively identical ads might be subject to different minimum bids for the same keyword.

Quality scores and reserve prices are directly linked. Thus, if Google decides for whatever reason to downgrade an advertiser’s quality score, the minimum bid (reserve price) that the advertiser must pay to appear in Google’s sponsored search results normally will go up.

Regardless of any legitimate purposes they may serve, quality scores and reserve prices give a dominant firm significant discretionary power over the pricing and performance of

search advertising. An advertiser’s quality score and its reserve price for a keyword are determined at the firm’s discretion. If the dominant firm sets a low quality score and/or high reserve price, the advertiser will have to spend more money securing desirable placement for its advertisement than an advertiser for whom the firm sets a higher quality and/or lower reserve price. As Wired magazine has observed with respect to the market leader in search, “if Google doesn’t like you as an advertiser, your price per click... will have to be higher to get top placement in search results than an advertiser Google likes a lot.”<sup>13</sup>

By itself, this power is not necessarily a problem, if it is exercised in a fair and objective manner. But it raises three fundamental concerns. First, the quality score and reserve price mechanisms give the dominant firm the ability to disadvantage advertisers who compete against it in its core search business (e.g. vertical search engines) and in markets that it seeks to enter (e.g. video sharing sites, online mapping companies). An individual described as a “well known executive at one of the largest sites on the Internet” recently commented on concerns about Google’s ability to disadvantage competitors:

*The situation we face today is unique. Due to Google’s dominance – and the fact that it controls such an enormous amount of consumer behaviour through paid and organic search listings – the company in essence governs commerce on the web. And any company that falls out of favour with Google, whether for reasons of bad practice or simple disagreement, can find itself at risk of going out of business.*<sup>14</sup>

<sup>12</sup>Google, AdWords Help, <http://adwords.google.com/support/bin/answer.py?hl=en&answer=49174>.

<sup>13</sup>Fred Vogelstein, *Why Google Needs Better Antitrust Advice*, Wired – Epicenter Blog (12 Feb. 2009), <http://blog.wired.com/business/2008/09/why-google-need.html>.

<sup>14</sup>*The Time Has Come to Regulate Search Engine Marketing and SEO*, Tech Crunch (13 July 2009), <http://www.techcrunch.com/2009/07/13/the-time-has-come-to-regulate-search-engine-marketing-and-seo/>.

## CASE STUDY Online Advertising (TradeComet)

Certain “vertical” search engines, which specialize in a particular area (e.g. travel-related search), have raised concerns about the power that the dominant online search firm has over their ability to compete. One such case is that of TradeComet’s SourceTool.com (“SourceTool”), as reported in the *New York Times* in September 2008<sup>1</sup> and described more fully in an antitrust complaint filed recently against Google in the United States.<sup>2</sup>

SourceTool is a vertical search engine focusing on the business-to-business market. After SourceTool was founded in 2005, it purchased several hundreds of thousands of keywords and phrases from Google’s AdWords at five to six cents per click. By March 2006, SourceTool was rated as the second-fastest growing website in the world. Google initially embraced SourceTool’s success, selecting it as a “site of the week”.

According to SourceTool, however, in the summer of 2006 Google raised SourceTool’s minimum bid to at least \$1, and in some instances as high as \$10 – a 10,000% increase. Because SourceTool could not afford these prices, its advertisements virtually disappeared from Google. Google reportedly refused to offer any explanation for the change, except to claim that SourceTool had poor “landing page quality”.<sup>3</sup> The lack of a concrete explanation led the *New York Times* to ask, “How can you adapt your business model to Google’s specs if Google won’t tell you what the specs are?”

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<sup>1</sup>Joe Nocera, *Stuck in Google’s Doghouse*, *The New York Times* (12 Sept. 2008) at C1, <http://www.nytimes.com/2008/09/13/technology/13nocera.html?partner=rssnyt&emc=rss>.

<sup>2</sup>Complaint, *TradeComet.com LLC v. Google Inc.*, No. 09-Civ-1400 (SDNY 17 Feb. 2009) (“TradeComet Complaint”).

<sup>3</sup>*Id.* at ¶ 48.

Second, without openness and transparency, advertisers and policymakers have no way of verifying whether the dominant firm has exercised its power responsibly, above all in the face of incentives to disfavour advertisers that pose a competitive threat. Advertisers are unable to discern how their scores are calculated, why their scores increase or decrease over time, how they can improve their score, or whether any error was made in the calculation of their score.<sup>15</sup> One advertising firm that helps clients manage online advertising campaigns recently summed up the quandary: “Google sells four times more ads than anyone else online. QS [quality score] is central to how those ads are sold. QS determines what each advertiser pays per click. QS determines how many clicks each advertiser receives. But QS is a black box. The details of the algorithm are secret.”<sup>16</sup>

Third, without the threat of real competition, a dominant firm will have no incentive and will face little in the way of market pressure to become more open and transparent or otherwise respond to advertiser concerns – particularly if the brunt of its actions fall most heavily on the handful of firms who are or may be perceived as nascent competitors. Although competition law clearly imposes special responsibilities on dominant firms not to foreclose competition in this manner, companies that are dependent on search and search advertising might be reluctant to bring such concerns to the attention of regulators for fear of retribution by the dominant firm.

## V. Rankings of natural search results

Unlike the sponsored search ads returned in response to a keyword search by a consumer, “natural” search results historically have been determined according to a neutral algorithm that indexes and ranks the results according to perceived relevance and other objective criteria. This distinction between natural and sponsored search results is important, as consumers trust that the natural results are non-biased and bear no relation to whether or not a site is affiliated with or otherwise favoured by the search engine. Here again, transparency – particularly by a dominant firm – is important to ensuring that the search engine fulfils these expectations and does not abuse its market power.

At one time, the methodology for ranking natural search results was fairly clear. Google, for example, used a neutral search algorithm and provided a reasonably straightforward explanation of how the algorithm functioned. In more recent years, natural search has become a more complex matter as search engines have sought to distinguish themselves by employing more sophisticated algorithms that take into account a wider array of factors in determining the ranking of search results. While consumers may benefit from more tailored and sophisticated natural search results, the complexity of search algorithms today also carries the potential for manipulation.

Certainly, manipulation of natural search results by any search engine is troubling, regardless of the search engine’s market

<sup>15</sup>While Google acknowledges that its use of certain (relatively ill-defined) factors – such as the “quality of your landing page” and the “relevance of the keyword to the ads in its ad group” – to calculate quality scores, it also uses “other relevance factors” that are not disclosed at all. See Google, *What Is Quality Score and How Is It Calculated?*, <http://adwords.google.com/support/bin/answer.py?hl=en&answer=10215>.

<sup>16</sup>Alan Rimm-Kauffman, *Google Provides More Detail on Quality Score. Nope.* (posted 31 Oct. 2008), <http://www.rimmkauffman.com/rkgblog/2008/10/31/quality-score-explained/>.

size. If a user is not aware that a search engine is using non-objective factors in determining the placement of natural search results, he or she may unknowingly be led to sites favoured by the search engine. Indeed, it is this sort of concern that led regulators in the United States to require search engines to label paid search results clearly so that they are not confused with natural search results. As the U.S. Federal Trade Commission has pointed out, “clear and conspicuous disclosures would put consumers in a better position to determine the importance of these practices in their choice of search engines to use.”<sup>17</sup>

The natural search practices of a dominant firm, however, affect more than just the consumers misled by a given search query. A dominant search engine may have “the power to actually determine which websites exist for surfers, and which do not.”<sup>18</sup> This power is of particular concern where a dominant search engine also imposes penalties on sites if they fail to conform to criteria established unilaterally by the search engine platform.<sup>19</sup> With respect to today’s dominant search engine, the imposition of such penalties is sometimes referred to as the “Google slap.” Stories abound of web sites being harmed or even forced out of business after being hit with the Google slap for reasons that are never disclosed to the web site owner.<sup>20</sup>

With the power to determine winners and losers on the Internet, transparency in natural search rankings is of special importance. An article by Wired magazine concerning interest of U.S. antitrust authorities on Google’s practices highlighted these concerns:

*Because its search and advertising algorithms are secret, there is no way for competitors or partners to know whether Google tweaks results to direct traffic to its own properties over theirs. Enter a street address into Google’s search engine, for instance, and Google Maps tops the results. Type in “Britney Spears” and Google News comes up before People magazine or TMZ.com. (Google-owned YouTube tops the video results, above MTV and MySpace.)<sup>21</sup>*

The experience of Foundem (see text box) highlights the effect that such lack of transparency can have on companies that depend on search and search advertising to reach consumers. In another case, a music blog was “banned” from Google search results; when the author approached Google “he was told that the problem would be handled, but since then, nothing has happened.”<sup>22</sup> The common thread among these and other cases is that the affected publisher had no means of discerning why they had been removed from Google, and whether the reason was fair.

<sup>17</sup>Letter from Heather Hipsley, Division of Advertising Practices of the Federal Trade Commission, to Gary Ruskin, Commercial Alert (27 June 2002), <http://www.ftc.gov/os/closings/staff/commercialalertattach.shtml>.

<sup>18</sup>Dora Kishinevsky, *So Shall Be Done to the Site that Annoys Google*, Calcalist (22 June 2009) (quote translated from Hebrew to English), <http://www.calcalist.co.il/internet/articles/0,7340,L-3310645,00.html>.

<sup>19</sup>See Tricia Ellis-Christensen, *What is a Google Slap?*, Wisegeek (6 Aug. 2009) (“[I]n 2008, a round of Google Slap actions on small vendors took considerable toll, driving many companies out of business quickly. Many argued that their pages conformed to Google’s AdWords recommendations for pages, and yet they still received very low [PageRank] rankings. This meant the enormously high pay per click fees were prohibitive, and comparable to banning certain vendors from using AdWords . . .”), <http://www.wisegeek.com/what-is-a-google-slap.htm>.

<sup>20</sup>See Posting entitled *From Great Quality Score to Slap in 3 Months*, Affiliates4U (Jan. 2007), <http://www.affiliates4u.com/forums/affiliate-marketing-moderators-choice/74809-great-quality-score-slap-3-months.html>.

<sup>21</sup>Fred Vogelstein, *Why Is Obama’s Top Antitrust Cop Gunning for Google*, Wired (20 July 2009), [http://www.wired.com/techbiz/it/magazine/17-08/mf\\_googlopoly?currentPage=all](http://www.wired.com/techbiz/it/magazine/17-08/mf_googlopoly?currentPage=all).

<sup>22</sup>*Id.*

## CASE STUDY Natural Search and Online Advertising (Foundem)

The case of Foundem illustrates the concerns about transparency in natural search results. Foundem is a UK-based technology company that provides vertical search and price comparison services in categories that include travel, jobs, property, and consumer products. It was named the “top” price comparison site in the UK by the long-running *Gadget Show*,<sup>1</sup> and powers content-integrated price comparison services for several of the UK’s leading media companies. Google users, however, rarely come across Foundem because of a “search penalty” that Google imposed upon Foundem in June 2006. Under this penalty, Google’s users are prevented from finding any of Foundem’s price comparison results, no matter how relevant to their query. Within weeks of its disappearance from Google’s natural search results, Foundem also saw its Landing Page Quality Scores for search advertising on AdWords decline precipitously, raising its minimum bid for paid search 10,000% (from around 5p a click to around £5). The timing and symptoms of Foundem’s AdWord penalty bear a striking resemblance to that of TradeComet (see previous case study). In effect, these penalties locked Foundem out of Google, which has an estimated 90 % share of the search market in the UK.

In a series of communications and reconsideration requests, Foundem’s creators urged Google to reverse the penalties on both its natural search and search advertising listings. Foundem explained that its site was not the sort of “deceptive”, “manipulative” or “irrelevant” site that is the purported target of Google’s quality guidelines,<sup>2</sup> and in fact was very relevant for users seeking price comparisons in the UK. After a year of such appeals, a senior AdWords representative acknowledged that the downgrade was the result of a new Google algorithm designed to automatically detect and penalise certain types of sites, such as price comparison and travel search. Google’s AdWord team then manually “whitelisted” Foundem, and Foundem’s Quality Scores were restored to their previous high levels. Curiously, however, Google has maintained Foundem’s natural search penalty. In a recent report, *Guardian (UK)* observed that “Foundem’s fight to discover what happened has highlighted the ever-growing influence of [Google’s] search algorithms.”<sup>3</sup>

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<sup>1</sup>See *The Gadget Show – Christmas Shopping*, FiveFWD (8 Dec. 2008), <http://fwd.five.tv/gadget-show/videos/news/christmas-shopping>.

<sup>2</sup>See Google Webmaster Guidelines, <http://www.google.com/support/webmasters/bin/answer.py?answer=35769>.

<sup>3</sup>Richard Wray, *Search for Answers to Google’s Power Leaves UK Internet Firm Baffled*, *The Guardian* (17 Aug. 2009), <http://www.guardian.co.uk/business/2009/aug/17/google-search-baffles-internet-firm>.

## VI. Interoperability / data portability

Online advertisers often use multiple advertising platforms, including multiple search engines. To make this coordinated effort work, advertisers need to compare and aggregate data concerning campaign performance and other metrics from various advertising platforms. This means that the data must be “interoperable” and not locked in to any one advertising platform. In a very simple campaign, the advertiser could manually port data from one platform to another platform, but for more complex campaigns this would be time-consuming and inefficient. The developers of ad serving tools (i.e. the tools and services that deliver online advertisements to website visitors) thus routinely design their products to facilitate interoperability among multiple advertising platforms.

The ability to port data seamlessly from platform to platform contributes to a healthy online marketplace. Interoperability improves competition among platforms, such that advertisers can increase or decrease purchases of advertisements on a given platform based upon performance. Interoperability also promotes transparency by allowing for the development of tools that better analyse the traffic on a site, giving advertisers both real-time feedback and more accurate analysis of the impact of their advertising. This helps to prevent “click fraud” and other practices that may inflate the cost of online advertising.

Given the importance of such interoperability to competition and transparency, policymakers should look with scepticism upon any unnecessary restrictions on interoperability, particularly by dominant firms. In this respect, many parties have expressed concern about

restrictions that Google places on ad-serving tools developed by third parties for their advertiser clients. Specifically, the Terms & Conditions (“T&Cs”) for the Google AdWords application programming interface (API) – which set the rules for how software applications are allowed to interact with the AdWords platform – significantly limit how advertisers may store and copy their own information. For instance, the T&Cs prohibit advertisers from using any third-party ad-serving tool that shows AdWords campaign management data on the same tab or screen as such data for any competing ad platform, and that such tools “may not offer a functionality that copies data from one tab or screen into another tab or screen.”<sup>23</sup> The T&Cs further state that AdWords campaign management data “must be stored separate from” such data for any competing platform and “may not be stored in a manner that is associated” with such data.<sup>24</sup>

The upshot of these restrictions is that if an advertiser relies on a third-party developer’s tools to manage its AdWords campaigns, it will not have the ability to efficiently and effectively manage campaigns across multiple advertising platforms. At best, it will have to import data concerning its campaign from AdWords manually into other advertising platforms – a very inefficient process. It is medium- and smaller-sized advertisers who rely most often on the third-party tools subject to Google’s restriction, because they cannot afford to employ developers in-house.

Professor Ben Edelman of Harvard Business School has studied this problem and stated that the “net effect of the... restriction is to reinforce the tendency of small to medium-sized

<sup>23</sup>Google, AdWords API Terms & Conditions, sect. III.2.c.(i), (ii). <http://code.google.com/apis/adwords/docs/terms.html>.

<sup>24</sup>*Id.*, sect. III.2.c(iii).

advertisers to ‘single-home’ – to use only Google AdWords to the exclusion of competing platforms.” He notes that, “[w]ere it not for Google’s restriction, more advertisers would sign up to use competing ad platforms.”<sup>25</sup> This restriction also is inconsistent with Google’s own commitment to openness and data portability. For instance, Google recently announced an initiative “whose singular goal is to make it easier for users to move their data in and out of Google products... [W]e believe that you should be able to export any data that you create in (or import in) a product.”<sup>26</sup>

As in other contexts, if Google did not hold a dominant position in online search and search advertising, its API restrictions would have less risk of thwarting competition or raising prices. Advertisers would simply leave Google out of their coordinated advertising campaigns. Yet because Google controls such a large share of the online search and search advertising markets, advertisers may feel they have no choice but to advertise on Google.

## VII. Payments to Publishers

Most commercial websites depend on the sale of advertisements for their survival. A web publisher, much like a newspaper, typically sets aside a portion of the space on its web pages to display ads. Websites normally have a choice to sell this ad space either directly to advertisers, or indirectly, typically through an ad network or other ad platform.

As in other contexts, transparency is important to a well-functioning marketplace for the advertising space sold by online publishers. This is especially true where, as is often the case, the online publisher

is not selling advertising space directly to an advertiser but rather relies upon an advertising platform. To the extent that the publisher does not have meaningful information about how the advertising is priced by the advertising platform, it is in a weakened bargaining position in negotiations over its share of the advertising revenue obtained.

In addition, greater transparency helps publishers improve their ability to monetise their sites. When a publisher knows the rates that advertisers are paying for appearing on their site, they are helped in designing and marketing their websites so as to enhance their value. In simple terms, information about how the revenues are shared enables publishers to increase both the aggregate revenues generated and their share of those revenues.

Transparency also allows publishers, advertising agencies, and advertisers to standardise how they measure data on advertising. As in other contexts – like the measurement of the fuel economy of different automobiles – if data measurements cannot be standardised, there will be significant variations in the reliability of measurements across the industry. In turn, when measurements are standardised and thus reliable, online publishers will have an improved ability to adapt their site to the needs of advertisers, reduce error, speed up billing cycles, and otherwise compete more effectively and efficiently for advertising dollars.

Because of Google’s dominance in the market, it is important to consider whether it provides such openness and transparency to publishers. Because Google has such a large base of advertisers – its marketing materials

<sup>25</sup>Ben Edelman, PPC Platform Competition and Google’s ‘May Not Copy’ Restriction (June 2008), <http://www.benedelman.org/news/062708-1.html>.

<sup>26</sup>See Google, *The Data Liberation Front*, at [www.dataliberation.org](http://www.dataliberation.org).

for publishers extols “the thick Google ‘black book’ of advertisers”<sup>27</sup> – publishers may feel they have no choice but to use Google’s service for displaying ads on third-party websites, known as AdSense. As more publishers sell space through Google, Google’s share of that market grows larger and its sensitivity to publishers’ concerns arguably declines. Indeed, some publishers have complained that Google refuses to disclose to them the payments it receives from advertisers and what percentage it passes along to websites, known as Traffic Acquisition Cost (TAC).<sup>28</sup> Smaller web publishers in particular have expressed concern that Google may be decreasing or otherwise manipulating their TAC without notice.<sup>29</sup>

At the same time that Google’s power to push down payments to web publishers is growing, it increasingly competes with these same publishers for advertiser dollars and in the supply of online content. Google already operates several services – such as YouTube, Google News, Blogger, and Knol – that commoditise and compete with web publishers’ own video, news, and other content sites.

Indeed, in response to a complaint filed by the Italian Newspaper Publishers’ Federation (FIEG), the Antitrust Authority in Italy recently announced the opening of an inquiry concerning the Google News service, which Google describes as a “computer-generated news site that aggregates headlines from news sources worldwide.”<sup>30</sup> FIEG and other publishers have complained that Google News drives traffic away from their sites to Google’s

profit, but Google does not provide a reasonable means for opting out of the service. In a statement concerning the inquiry, the Antitrust Authority explained: “Google allegedly makes it possible for a publisher to not appear on Google News, but that allegedly involves the exclusion of the publisher’s content from the Google search engine. That is a highly penalising condition.”<sup>31</sup>

<sup>27</sup>Google AdSense, [https://www.google.com/adsense/login/en\\_US/?gsessionid=lha6saPIWnxM-S-cuPltGQ](https://www.google.com/adsense/login/en_US/?gsessionid=lha6saPIWnxM-S-cuPltGQ).

<sup>28</sup>See, e.g. Posting of Tom Foremski to ZDNet <http://blogs.zdnet.com/Foremski/?p=196>.

<sup>29</sup>See, e.g. Jeremy Zawodny, *Is Google Hoarding the Pie?* (6 Feb. 2005), <http://jeremy.zawodny.com/blog/archives/004137.html>.

Google reportedly has taken other unilateral actions that depress payments to publishers. For example, Google reportedly has paid TACs based on an inaccurate Euro-to-dollar exchange rate that resulted in lower payments to European web publishers. See Posting to Search Engine Roundtable, (2 Mar. 2009), [www.seroundtable.com/archives/019528.html](http://www.seroundtable.com/archives/019528.html).

<sup>30</sup>About Google News, [http://news.google.com/intl/en/about\\_google\\_news.html](http://news.google.com/intl/en/about_google_news.html)

<sup>31</sup>Phillip Wilan, *Italy Opens Antitrust Investigation into Google News*, IDG News Service, 27 Aug. 2009, <http://www.infoworld.com/d/applications/italy-opens-antitrust-investigation-google-news-358>.

## VIII. Next Steps for Improving Transparency: ICOMP Questions

Openness and transparency have critical roles in safeguarding the health of two sectors that have proven essential to the growth of the Internet: online search and search advertising. That role is of distinct importance given the presence of a dominant firm in both of these sectors and creates special responsibilities for that firm. This paper accordingly has sought to highlight the benefits of openness and transparency and identify instances in which it may be lacking, so that stakeholders can engage in a more informed dialogue on the question of how best to promote transparency. In considering that question, the following questions are essential:

- The ranking of both natural and paid search results by a dominant firm has significant influence over consumer behaviour on the Internet. In light of that influence, to what extent does a dominant firm have a responsibility to disclose the criteria used in those rankings to consumers, advertisers, and online publishers? How should the search engine's legitimate interests in confidentiality of its search algorithms be balanced with the marketplace's need for transparency?
- Are there particular practices, such as the setting of individualised reserve prices for advertisers, that should not be practised by a dominant search advertising platform because they create an especially high opportunity for abuse? If such practices do occur, what sort of disclosure should be required to mitigate opportunity for abuse?
- To what extent would the making of a public commitment by a dominant firm that it does not and will not manipulate rankings of natural or paid search advertisements be helpful?
- As a dominant firm moves from its core search and online advertising business into areas that put it in direct competition with advertisers or online publishers, what additional mechanisms for openness and transparency are appropriate?
- Should a dominant firm be prohibited from restricting the ability of advertisers to manage campaigns efficiently across multiple advertising platforms (e.g. through restrictions that limit interoperability and portability of data by advertisers using third-party ad-serving tools)?
- Is it sufficient for the dominant firm to have an ad hoc appeal mechanism for online publishers and advertisers who believe they have been unfairly degraded in natural or paid search results, or should there be consistent and predictable procedures for resolution of complaints? If so, what are the key features of those procedures?
- What is the appropriate role of government in promoting transparency and competition in online search and search advertising?

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Notes



