

**EXHIBIT A**

IN THE CIRCUIT COURT OF MILLER  
COUNTY, ARKANSAS

LANE'S GIFTS AND COLLECTIBLES, L.L.C.,  
and MAX CAULFIELD d/b/a CAULFIELD  
INVESTIGATIONS, INDIVIDUALLY AND  
AS CLASS REPRESENTATIVES ON BEHALF  
OF ALL SIMILARLY SITUATED PERSONS

05 OCT 14 PM 4:29  
BY   
Plaintiffs,

v.

CAUSE NO. CIV-2005-52-1

YAHOO! INC., OVERTURE SERVICES, INC.,  
TIME WARNER, INC., AMERICA ONLINE, INC.,  
NETSCAPE COMMUNICATIONS CORPORATION,  
ASK JEEVES, INC., BUENA VISTA INTERNET GROUP  
d/b/a GO.COM, GOOGLE, INC., LYCOS, INC.,  
LOOKSMART, LTD., and FINDWHAT.COM, INC.,

Defendants

**DEFENDANTS GOOGLE, INC., TIME WARNER, INC.,  
AMERICAN ONLINE, INC., NETSCAPE COMMUNICATIONS CORPORATION,  
LYCOS, INC. AND LOOKSMART, LTD., ASK JEEVES, INC.'S  
MOTION TO DISMISS AND SUPPORTING BRIEF**

Daralyn J. Durie  
Ryan M. Kent  
KEKER & VAN NEST, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

Jennifer Haltom Doan  
Arkansas Bar No. 96063  
HALTOM & DOAN, LLP  
6500 N. Summerhill Road, Suite 1A  
Texarkana, TX 75503  
Telephone: 903-255-1000  
Facsimile: 903-255-0800

**ATTORNEYS FOR DEFENDANTS  
GOOGLE, INC. AND ASK JEEVES,  
INC.**

Robert A. Van Kirk  
Gilbert O. Greenman  
Williams & Connolly, LLP  
725 Twelfth Street, NW  
Washington, DC 20005

Damon Young  
Lance Lee  
Kristian Young  
Young, Pickett & Lee  
4122 Texas Boulevard  
Post Office Box 1897  
Texarkana, TX 75503

**ATTORNEYS FOR DEFENDANTS  
TIME WARNER, INC., AMERICAN  
ONLINE, INC., NETSCAPE**

John C. Englander  
James W. McGarry  
Goodwin Procter, LLP  
53 State Street  
Boston, MA 02109

Johanna Calabria  
Cooley Godward, LLP  
101 California Street, 5<sup>th</sup> Floor  
San Francisco, CA 94111-3580

Robert Dodson  
Dodson & Dodson  
2005 Moores Lane  
Texarkana, TX 75503

**ATTORNEYS FOR LYCOS, INC.**

Alan Harrel  
Atchley Russell, Waldrop & Hlavinka, L.L.P.  
1710 Moores Lane  
Texarkana, Texas 75503

**ATTORNEYS FOR LOOKSMART, LTD.**

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## I. INTRODUCTION

All of the potential plaintiffs in this case — including each of the named plaintiffs — voluntarily agreed that this case must be heard somewhere other than this judicial district. Now, the two remaining named plaintiffs seek to rewrite their concededly binding agreements and the binding agreements of hundreds of thousands of potential class members by asking that this matter be heard in Arkansas.

But plaintiffs may not violate their contracts to unilaterally change the agreed-upon forum for this action. Both Arkansas and California law are plain: where an action, such as this one, is brought in direct contravention of a forum selection clause, a court must enforce the clause and dismiss the action. Plaintiffs cannot bring suit based upon contractual provisions that they like, while jettisoning provisions that they do not like.

Nor can plaintiffs rewrite the contracts of the absent potential class members. Many of those class members likely wish this action to proceed in California — the location that most of them agreed was the only proper venue for suit. Indeed, several potential class members have already filed identical suits there.

Therefore, Google<sup>1</sup> respectfully asks this Court to dismiss this action pursuant to Arkansas Rules of Civil Procedure 12(b)(1), (3) and (6). Plaintiffs may then re-file or join the pending actions in California.

## II. BACKGROUND FACTS

This case is premised on the allegation that the defendants have breached a set of advertising contracts with the named plaintiffs and the class they purport to represent. *See*

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<sup>1</sup> Defendants AOL, Netscape, Lycos, LookSmart and Ask Jeeves (the "No-Contract Defendants") join in this motion, though they are differently situated than Google because they do not have contractual relationships with either of the named plaintiffs. The No-Contract Defendants, however, allow Google to display advertisers' ads on their sites. Therefore, it is mathematically possible, albeit unlikely, that the named plaintiffs' ads may have appeared on the No-Contract Defendants' websites. In that unlikely and theoretical event, those ads would have appeared by virtue of the plaintiffs' contract with Google, which require all disputes to be litigated in California.

Time Warner joins in this motion as well, though its role in this lawsuit is even more attenuated; it appears to have been sued only because it is the corporate parent of AOL.

Plaintiffs' Second Amended Complaint ("SAC") ¶¶ 43-44. Specifically, plaintiffs contend that the defendants overcharged for advertising by failing to discover and discount for internet users who viewed plaintiffs' advertisements but did not intend to purchase the plaintiffs' products and services. *See id.* ¶ 27.

Google agrees that it has enforceable advertising contracts with the two remaining named plaintiffs. Indeed, every advertising customer of Google freely and voluntarily agrees to a contract before beginning each advertising campaign. *See* Declaration of Alana Karen ("Karen Decl.") ¶ 3, and Exs. A-C (AdWords contracts). Each of those advertising contracts includes a forum-selection and choice-of-law clause. And every single one of those clauses calls for the dispute to be litigated in another judicial district and applies a state law other than Arkansas' to that dispute. Karen Decl. ¶ 5. Here, the named plaintiffs signed forum-selection and choice-of-law clauses specifying that the contract "must be construed as if both parties jointly wrote it, governed by California law . . . and adjudicated in Santa Clara County, California."<sup>2</sup> *Id.* Ex. A (AdWords Contract) ¶ 7; *see also* Ex. B and C (AdWords Contracts) ¶ 15.

### III. ARGUMENT

#### A. California Law Governs This Motion To Dismiss.

Arkansas' choice of law rules govern whether Arkansas or California law governs the contracts at issue in this case. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Under Arkansas law, where the parties specify that a particular state's law governs a contract, the court should apply that state's law to suits arising out of that contract provided that other state has a substantial connection with the contract. *See Evans v. Harry Robinson Pontiac-Buick, Inc.*, 336 Ark. 155, 162-164, 983 S.W.2d 946, 950-51 (1999); *Ark. Appliance Distrib. Co. v. Tandy Elecs., Inc.*, 292 Ark. 482, 485-86, 730 S.W.2d 899, 900 (1987); *Cooper v. Cherokee Vill. Dev. Co.*, 236 Ark. 37, 43, 364 S.W.2d 158, 161 (1963).

Google and the named plaintiffs entered into advertising contracts that specified that

<sup>2</sup> Every Google customer's contract specifies the same, except for a very small number of Google customers who have negotiated different forum selection and choice-of-law clauses — none of which specify Arkansas. *Id.* ¶ 5.

California law governs those contracts. Karen Decl., Ex. A (The contract “must be construed as if both parties jointly wrote it, [and is] governed by California law . . .”). The parties did not select the law of California haphazardly. The defendant, Google, has its headquarters in California. Karen Decl. ¶ 7. Google offers the contract for advertising services from those headquarters. *Id.* Google provides the contracted advertising service from those headquarters. *Id.* Google sends bills arising out of the contracted advertising service to its customers from those headquarters. *Id.* Therefore, the state of California has a substantial connection with the contract, and this Court should apply California law in deciding this motion to dismiss. *See, e.g., Ark. Appliance Distrib. Co.*, 292 Ark. at 484-86, 730 S.W.2d at 899-901 (finding a substantial connection where a contract was accepted in Fort Worth, Texas and the monthly payments on the contract were mailed from Arkansas to Texas).

**B. The Court Should Dismiss This Action Because It Was Brought in Violation of a Reasonable Forum Selection Clause.**

California law “presume[s] a contractual forum selection clause is valid and place[s] the burden on the party seeking to overturn the forum selection clause.” *Schlessinger v. Holland Am. N.V.*, 120 Cal. App. 4th 552, 558 (2004);<sup>3</sup> *see also M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18-19 (1972); *Nelms v. Morgan Portable Bldg. Corp.*, 305 Ark. 284, 289, 808 S.W.2d 314, 316-317 (1991). The party seeking to overturn the forum selection must show “that enforcement of the clause would be unreasonable under the circumstances.” *Net2Phone, Inc. v. Superior Court*, 109 Cal. App. 4th 583, 588 (2003) (citation omitted). “Unreasonable under the circumstances” means that “the forum selected would be *unavailable* or *unable to accomplish substantial justice*.” *Cal-State Bus. Prods. & Servs., Inc. v. Ricoh*, 12 Cal. App. 4th 1666, 1679 (1993) (emphasis in original) (quotation omitted). But “neither inconvenience nor additional expense in litigating in the selected forum is part of the test of unreasonability.”<sup>4</sup> *Id.*

<sup>3</sup> It is unclear whether Rule 12(b)(1), (3), or (6) is the proper procedural vehicle to move to dismiss based on a forum selection provision. Defendants thus move pursuant to all three, a technique implicitly authorized by the Arkansas Supreme Court in *Nelms v. Morgan Portable Bldg. Corp.*, 305 Ark. 284, 293, 808 S.W.2d 314, 319 (1991).

<sup>4</sup> Arkansas law places the same burden on plaintiffs. They would have to prove that Google’s forum selection clause is unjust or unreasonable or invalid for reasons such as fraud or overreaching such that they would actually deprive the opposing party of his fair day in court. *BAAN, U.S.A. v. USA Truck, Inc.*, 82 Ark. App. 202, 206, 105

**1. Plaintiffs brought this suit in violation of the contractual forum selection clauses.**

Every potential plaintiff agreed to a contract that includes a forum selection clause. Not one of those forum selection clauses permits a plaintiff to seek adjudication of a contract dispute in this judicial district. Indeed, the named plaintiffs voluntarily agreed when signing their contracts that the contract “*must* be . . . adjudicated in Santa Clara County, California.” Ex. A (AdWords Contract) at ¶ 7 (emphasis added); *see also* Ex. B and C (AdWords Contracts) at ¶ 15. Bringing this suit in Arkansas violates that contractual provision. *See* SAC ¶ 44. Accordingly, the Court should enforce the parties’ agreements and dismiss this action.<sup>5</sup>

**2. Applying the forum selection clauses is reasonable here.**

Plaintiffs cannot show that the forum selected — California — would be unavailable or would deny them substantial justice. There can be no dispute that California is an available forum; two other putative class actions already have been filed in California and are currently pending before the Honorable Ronald Whyte in the Northern District of California, San Jose Division. *See Click Defense Inc. v. Google, Inc.*, Case No. C 05 02579 RMW; *Mizera v. Google, Inc.*, Case No. C 05-02885 RMW. Nor can there be a dispute that justice can be accomplished in the California courts.

Further, California is a reasonable forum for litigating plaintiffs’ claims. The alleged wrongful acts — overcharging for advertising — occurred in California. Plaintiffs bring suit alleging that Google breached its contracts by overcharging for advertising by failing to discover and discount for internet users who viewed plaintiffs’ advertisements but did not intend to purchase the plaintiffs’ products and services. *See* SAC ¶ 27. Google provided the contracted advertising service and charged its advertisers for those services from California. Karen Decl.

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S.W.3d 784, 786 (2003). For the reasons described herein, Plaintiffs cannot meet this burden under Arkansas law.

<sup>5</sup> The named plaintiffs may base their claims only upon their contracts (to the extent that they have any) with defendants; the named plaintiffs lack standing to sue on contracts that defendants have with absent, potential class members. *See Farm Bureau Policy Holders v. Farm Bureau Mut. Ins. Co.*, 335 Ark. 285, 303, 984 S.W.2d 6, 15 (1998). Regardless, defendants’ contracts with absent, potential class members include forum selection clauses that require this suit be brought elsewhere.

¶ 7. Correspondingly, nearly all documents and witnesses related to the alleged wrongful activity are located in California. And, the California courts have a great deal of expertise in commercial litigation involving similar technologies. Therefore, the choice of forum clauses have a rational basis in light of the facts underlying the transaction. *See Cal-State Business Prods. & Servs.*, 12 Cal. App. 4th at 1682 (The choice of New York as the forum had a “reasonable” basis even though that forum was unrelated to the parties’ domiciles and the transactions involved, because it is reasonable for a party “to wish to make use of the New York City courts which would have (at least institutionally) a great deal of expertise in commercial litigation.”).

Nor does the mere fact that the named plaintiffs did not negotiate their forum selection clauses render those clauses unenforceable. Evidence that a party had “no power to change this term of the contract is of no import so long as it signed the contract freely and voluntarily, and possessed the power to walk away from negotiations if displeased with the provision.” *Cal-State Bus. Prods. & Servs.*, 12 Cal. App. 4th at 1681; *see also CQL Original Prods., Inc. v. Nat’l Hockey League Players’ Ass’n*, 39 Cal. App. 4th 1347, 1355 (1995); *Carnival Cruise Lines v. Shute*, 499 U.S. 585, 593-595 (1991). Plaintiffs freely and voluntarily chose to advertise with Google. They could have walked away and spent their advertising dollars elsewhere. Or, they could have attempted to negotiate a different forum selection clause, as certain members of the potential class did. But the named plaintiffs did not do so; they signed their contracts. In doing so, they undertook the obligations clearly set forth in the two-page contract — just as they received (and now sue to enforce) the benefits provided by that same contract.

**C. In The Alternative, The Court Should Dismiss Plaintiffs’ Contract, Unjust Enrichment, and Conspiracy Claims.**

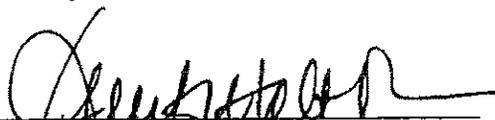
Should this Court not dismiss this action based on the forum selection clauses, Google asks this Court to dismiss this action for failure to state a claim pursuant to Arkansas Rule of Civil Procedure 12(b)(6). The SAC utterly fails to adequately plead its breach of contract, unjust enrichment, and civil conspiracy claims. Further, the SAC fails to plead fraudulent concealment or a joint venture or enterprise. Rather than duplicate pleadings filed in this action, however,

Google, the No-Contracts Defendants, and Time Warner join in Defendant Yahoo's Motion to Dismiss filed in this action on October 14, 2005.

#### IV. CONCLUSION

Because the parties to this action uniformly have agreed to litigate the present dispute in a forum other than the one chosen by the named plaintiffs, the Court should dismiss this action for improper venue.

Respectfully submitted,

By: 

Jennifer Haltom Doan  
Arkansas Bar No. 96063  
John Peyton Perkins, III  
Arkansas Bar No. 2005252  
HALTOM & DOAN, LLP  
6500 N. Summerhill Road, Suite 1A  
Texarkana, TX 75503  
Telephone: 903-255-1000  
Facsimile: 903-255-0800

Daralyn J. Durie  
Ryan M. Kent  
Clement S. Roberts  
Asim Bhansali  
KEKER & VAN NEST, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

**ATTORNEYS FOR DEFENDANTS  
GOOGLE, INC. AND ASK JEEVES, INC.  
AND BEHALF OF THE OTHER  
SUBMITTING DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon each of the following counsel as noted below on October 14<sup>th</sup>, 2005.

**ATTORNEYS FOR PLAINTIFFS:**

John C. Goodson (Hand Delivery)  
Keil & Goodson  
611 Pecan Street  
Texarkana, AR 71854

Stephen F. Malouf (Certified Mail)  
Law Offices of Stephen F. Malouf  
3506 Cedar Springs Road  
Dallas, TX 75219

Joel M. Fineberg (Certified Mail)  
R. Dean Gresham  
Law Offices of Joel M. Fineberg, PC  
3811 Turtle Creek Boulevard  
Suite 1900  
Dallas, TX 75219

George McWilliams (Hand Delivery)  
Richard Adams  
Patton, Roberts, McWilliams &  
Capshaw, LLP  
2900 St. Michael Drive  
Texarkana, TX 75503

James M. Pratt, Jr. (Certified Mail)  
Law Offices of James M. Pratt, Jr. PA  
144 Washington St. NW  
P. O. Box 938  
Camden, AR 71701-0938

Kevin Crass (Certified Mail)  
Friday, Eldredge & Clark, LLP  
400 W. Capitol Ave., Suite 2000  
Little Rock, AR 72201-3493

**ALL DEFENSE COUNSEL:**

J. David Crisp  
Crisp, Boyd, Poff, Schubert & Burgess, LLP  
2301 Moores Lane  
Post Office Box 6297  
Texarkana, TX 75505-6297

Wren Autrey  
Autrey, Autrey & Stewart  
501 E. 6<sup>th</sup> Street  
Texarkana, AR 71854

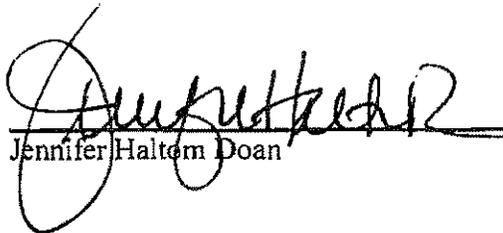
Janet L. Cullum  
Brent Smyth  
Cooley Godward LLP  
Five Palo Alto Square  
3000 El Camino Real, 4<sup>th</sup> Floor  
Palo Alto, CA 94306-2155

Jack Yellin  
The Walt Disney Co.  
500 South Buena Vista Street  
Burbank, CA 91521

Beth Deere  
Clayborn Stone  
Williams & Anderson LLP  
111 Center Street, 22<sup>nd</sup> Floor  
Little Rock, AR 72201

David J. Stewart  
Richard Hays  
Matt Richardson  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424

Dennis L. Wilson  
Larry McFarland  
Emil Herich  
Keats McFarland & Wilson LLP  
9720 Wilshire Blvd.  
Penthouse Suite  
Beverly Hills, CA 90212



Jennifer Haltom Doan



IN THE CIRCUIT COURT OF MILLER COUNTY, ARKANSAS

LANE'S GIFTS AND COLLECTIBLES, L.L.C.,  
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INVESTIGATIONS, INDIVIDUALLY AND AS  
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YAHOO! INC., OVERTURE SERVICES INC.,  
TIME WARNER INC., AMERICA ONLINE,  
INC., NETSCAPE COMMUNICATIONS  
CORPORATION, ASK JEEVES, INC., BUENA  
VISTA INTERNET GROUP d/b/a GO.COM,  
GOOGLE INC., LYCOS, INC., LOOKSMART,  
LTD., and FINDWHAT.COM, INC.,

Defendants.

Case No. 2005-52-1

**DECLARATION OF ALANA KAREN  
IN SUPPORT OF DEFENDANTS  
GOOGLE, INC., TIME WARNER  
INC., AMERICA ONLINE, INC.,  
NETSCAPE COMMUNICATIONS  
CORPORATION, LYCOS, INC.,  
LOOKSMART, LTD., AND ASK  
JEEVES, INC.'S MOTION TO  
DISMISS OR, IN THE  
ALTERNATIVE, TO TRANSFER**

I, Alana Karen, hereby declare:

1. I am the Online Operations Manager for Policy for Google, Inc. ("Google"). I have been a Google employee since November 2001, and have held multiple positions at Google before my current position. I have personal knowledge of the facts set forth herein, and if called to testify as a witness thereto, could and would do so competently and under oath in Miller County, Arkansas.

2. Google's online advertising service allowing advertisers to create text- or image-based ads and to display them online in a targeted manner is called "AdWords."

3. Every AdWords customer is required to agree to a contract with Google before they are able to place any advertisements with Google. The vast majority of these agreements are online agreements that the advertiser accepts by clicking a button. There is thus no signature page or other printed record of the specific agreement. A true and correct copy of the current AdWords online contract is attached hereto as Exhibit A.

4. Only two of the named plaintiffs—Lane's Gifts and Collectables, LLC and Max Caulfield Investigations—have advertised with Google. Both of these entities agreed to an AdWords contract—and to the forum selection and choice-of-law clauses therein—before they placed any advertising with Google. A true and correct copy of the AdWords contracts in effect when Lane's Gifts and Collectables signed up as an AdWords customer is attached hereto as Exhibit B. A true and correct copy of the AdWords contract in effect when Max Caulfield signed up as an AdWords customer is attached hereto as Exhibit C.

5. A very small number of Google customers have negotiated AdWords Contracts with forum selection provisions outside of Santa Clara. These agreements are printed and signed on paper. None of the forum selection provisions in these printed agreements calls for disputes relating to the contract to be litigated in Arkansas.

6. Google currently provides ads from its AdWords advertisers to the websites of co-defendants America Online, Inc., Netscape Communications Corporation, Lycos, Inc., Looksmart, I.TD., and Ask Jeeves. All of the ads Google serves on these websites are served by Google pursuant to the advertising contracts between Google and the putative class members.

7. Google has no offices, employees or internet servers in the state of Arkansas and maintains no discoverable materials therein. No one I spoke to in the course of investigating the facts in connection with this declaration was aware of any Google employee ever visiting Arkansas for the purpose of marketing or promoting Google's internet advertising services. Rather, Google has its headquarters in Santa Clara, California. The servers from which Google serves its online advertising contracts are located at Google's Santa Clara, California headquarters. Google provides its AdWords service, including sending bills to its customers, from those headquarters and elsewhere outside of Arkansas.

I declare under penalty of perjury under the laws of the State of California and laws of the State of Arkansas that the foregoing is true and correct. Executed on this 13th day of October 2005, at Santa Clara, California.



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ALANA KAREN

**EXHIBIT A**

## Google Inc. AdWords Program Terms

These Google Inc. AdWords Program Terms ("Terms") are entered into by you and Google Inc. ("Google") regarding the Google AdWords Program ("Program") as further described in the Programmers frequently asked questions at <https://adwords.google.com/support> (the "FAQs") (collectively, the "Agreement"). You represent and warrant that you are authorized to act on behalf of, and bind to this Agreement, any third party for which you generate ads. This translation is provided for convenience only, and you agree that in the event of a conflict between this translated version and the U.S. English version located at <https://adwords.google.com/select/TCUSBilling.html> ("Original Version"), the Original Version shall govern. You hereby agree and acknowledge:

1. **Policies.** Program use is subject to all applicable Google and Partner policies, including without limitation the Editorial Guidelines ([adwords.google.com/select/guidelines.html](https://adwords.google.com/select/guidelines.html)), Google Privacy Policy ([www.google.com/privacy.html](http://www.google.com/privacy.html)) and Trademark Guidelines ([www.google.com/permissions/trademarks.html](http://www.google.com/permissions/trademarks.html)). Policies may be modified any time. You shall direct only to Google communications regarding your ads on Partner Properties. Some Program features are identified as "Beta," "Ad Experiment," or otherwise unsupported ("Beta Features"). Beta Features are provided "as is" and at your option and risk. You shall not disclose to any third party any information from, existence of or access to Beta Features. Google may modify ads to comply with any Google Property or Partner Property policies.
2. **The Program.** You are solely responsible for all: (a) keywords, and ad targeting options (collectively "Targets") and all ad content and ad URLs ("Creative"), whether generated by or for you; and (b) web sites proximately reachable from Creative URLs and your services and products (collectively "Services"). You shall protect your passwords and take full responsibility for your own, and third party, use of your accounts. Ads may be placed on (y) any content or property provided by Google ("Google Property"), and unless opted-out by you (z) any other content or property provided by a third party ("Partner") upon which Google places ads ("Partner Property"). Google and Partners may reject or remove any ad or Target for any or no reason. You may independently cancel online any campaign at any time (such cancellation is generally effective within 24 hours). Google may cancel immediately any ad, ID, the Program or these Terms at any time with notice (additional notice is not required to cancel a reactivated account). Sections 1, 2, 4, 5, 6 and 7 will survive any expiration or termination of this Agreement.
3. **Prohibited Uses.** You shall not, and shall not authorize any party to: (a) generate automated or fraudulent impressions or clicks; or (b) advertise anything illegal or engage in any illegal or fraudulent business practice in any state or country where your ad is displayed. You represent and warrant that (x) all your information is correct and current; (y) you hold and grant Google and Partners all rights to copy, distribute and display your ads and Targets ("Use"); and (z) such Use and websites linked from your ads (including services or products therein) will not violate or encourage violation of any applicable laws. Violation of these policies may result in immediate termination of this Agreement or your account without notice and may subject you to legal penalties and consequences.
4. **Disclaimer and Limitation of Liability.** GOOGLE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION FOR NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PURPOSE. Google disclaims all guarantees regarding the levels or timing of costs per click, click through rates or delivery of any impressions, positioning, clicks or conversions for any ads or Targets. EXCEPT FOR INDEMNIFICATION AMOUNTS PAYABLE TO THIRD PARTIES HEREUNDER: (a) NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY; AND (b) EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER IS LIMITED TO AMOUNTS PAID OR PAYABLE TO GOOGLE BY YOU FOR THE AD GIVING RISE TO THE CLAIM. Except for payment, neither party is liable for failure or delay resulting from a condition beyond the reasonable control of the party, including but not limited to acts of God, government, terrorism, natural disaster, labor conditions and power failures.
5. **Payment.** You shall be charged based on actual clicks and pay all charges in U.S. Dollars, or such other currency specified in writing by Google. Charges are exclusive of taxes. You are responsible for paying (y) all taxes and government charges, and (z) reasonable expenses and attorney fees Google incurs collecting late amounts. You waive all claims relating to charges unless claimed within 60 days after the charge (this does not affect your credit card issuer rights). Charges are solely based on Google's click measurements. Refunds (if any) are at the discretion of Google and only in the form of advertising credit for Google Properties. You acknowledge and agree that any credit card and related billing and payment information that you provide to Google may be shared by Google with companies who work on Google's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to Google and servicing your account. Google may also provide information in response to valid legal process, such as subpoenas, search warrants and court orders, or to establish or exercise its legal rights or defend against legal claims. Google shall not be liable for any use or disclosure of such information by such third parties.

6. **Indemnification.** You shall indemnify, defend and hold Google, its agents, affiliates, and licensors harmless from any third party claim or liability (including without limitation reasonable legal fees) arising out of your Program use, Targets, Creative and Services and breach of the Agreement. Partners may assert and enforce this Section 6 as a third party beneficiary.
7. **Miscellaneous.** The Agreement must be construed as if both parties jointly wrote it, governed by California law except for its conflicts of laws principles and adjudicated in Santa Clara County, California. The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Any conflicting or additional terms contained in additional documents (e.g. reference to a purchase order number) or oral discussion are void. You may grant approvals, permissions and consents by email, but any modifications to the Agreement must be made in a writing (not including email) executed by both parties. Any notices to Google must be sent to: Google Inc., AdWords Program, 1600 Amphitheatre Parkway, Mountain View, CA 94043 USA, with a copy to the Legal Department, via first class or air mail or overnight courier, and are deemed given upon receipt. Notice to you is acceptable by sending email to your specified email address and is deemed received when sent. A waiver of any default is not a waiver of any subsequent default. Unenforceable provisions will be modified to reflect the parties' intention, and remaining provisions of the Agreement will remain in full effect. You may not assign any of your rights hereunder and any such attempt is void. Google and you and Google and Partners are not legal partners or agents, but are independent contractors.

June 9, 2005

**EXHIBIT B**

## ADWORDS SELECT STANDARD TERMS AND CONDITIONS

This Agreement between you and Google, Inc. ("Google") consists of these Adwords Select Standard Terms and Conditions ("Terms and Conditions"), the AdWords Select Program (the "Program") Frequently Asked Questions, which may be revised periodically, and the terms of any advertising campaign you submit or modify. "You" or "Advertiser" means the entity identified in this enrollment form, and/or any agency acting on its behalf, which shall also be bound by the terms of this Agreement. Please read very carefully these Terms and Conditions and the Program Frequently Asked Questions (the "FAQs").

1. Uses; Partner Sites. You agree that your ads may be placed on (i) any site owned or operated by Google (a "Google Web Site") or (ii) unless you opt out of the syndication program described on the FAQs, on any site owned by a third party (a "Partner") with which Google has an agreement to place AdWords Select ads ("Partner Site"). Unless otherwise agreed to in writing by Google, any ads may be modified without your consent to comply with any policy of Google or any Partner Site. Google reserves the right to, and in its sole discretion may, at any time review, reject, modify, or remove any ad. The Partners may also have certain rights allowing them to reject, modify or withdraw ads placed under this Agreement. No liability of Google and/or any Partner shall result from any such decision.
2. Communications Solely With Google. Even if your ad(s) are placed on Partner Site(s), you agree to direct to Google, and not to any Partner, any communication regarding your ad(s) on any Partner Site.
3. AdWords Select FAQs. The FAQs contain many important policies and procedures. Google may modify the FAQs at any time upon notice published on Google's Web Site.
4. Parties' Responsibilities. You are responsible for knowing the contents of the

FAQs. You are solely responsible for the selection of all "Targets" (any keyword, negative keyword, category, and other targeting mechanism), and for the content of your ads, including URL links. Google is not responsible for anything regarding your Web site(s) including, but not limited to, maintenance of your Web site(s), order entry, customer service, payment processing, shipping, cancellations or returns.

5. Prohibited Uses. Google strictly prohibits using the Google Web Site or any Partner Site(s) (i) to generate fraudulent impressions of or fraudulent clicks on Advertiser's ad(s) or third-party ad(s), including but not limited to using robots or other automated query tools and/or computer generated search requests, and/or the fraudulent use of other search engine optimization services and/or software; (ii) to advertise substances, services, products or materials that are illegal in any state or country where the ad is displayed; (iii) in any way that violates any policy posted on the Google Web Site, as revised from time to time; or (iv) to engage in any other illegal or fraudulent business practice under the laws of any state or country where the ad is displayed. You may not include links to any Web site(s) as part of your ad, unless the content found at such site(s) is relevant to your Target(s). You may not run multiple ads linking to the same or similar site on the same search results page. Violation of these policies may result in immediate termination of this Agreement, and may subject you to state and federal penalties and other legal consequences.

6. Termination; Cancellation. Google may at any time, in its sole discretion, terminate the Program, terminate this Agreement, or cancel any ad(s) or your use of any Target. Google will notify you via email of any such termination or cancellation, which shall be effective immediately. You may cancel any ad and/or terminate this Agreement with or without cause at any time. Cancelled ads will be discontinued within 24 hours of notice received via your account on the Program homepage. Termination of your account shall be effective when Google receives notice via your

**ADWORDS SELECT STANDARD TERMS AND CONDITIONS**

account on the Program homepage. Upon termination for any reason, (i) you shall remain liable for any amount due for ads already delivered or for clicks on any ad(s), and (ii) Sections 2 and 4 through 15 shall survive termination.

**7. Confidentiality.** Each party agrees not to disclose Confidential Information of the other party without prior written consent except as provided herein. "Confidential Information" includes (i) ads, prior to publication, (ii) submissions or modifications relating to any advertising campaign, (iii) clickthrough rates or other statistics (except in an aggregated form that includes no identifiable information about you), and (iv) any other information designated in writing as "Confidential." It does not include information that has become publicly known through no breach by a party, or has been (i) independently developed without access to the other party's Confidential Information; (ii) rightfully received from a third party; or (iii) required to be disclosed by law or by a governmental authority.

**8. No Guarantee.** Google makes no guarantee regarding the levels of impressions or clicks for any ad on its site or those of its Partners. Google may offer the same Target to more than one advertiser. You may not receive any impressions for your ad(s) if for a given Target there are more advertisers than available display positions.

**9. No Warranty.** GOOGLE MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH RESPECT TO ADVERTISING AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.

**10. Limitations of Liability; Force Majeure.** In no event shall Google or any Partner be liable

for any act or omission, or any event directly or indirectly resulting from any act or omission of Advertiser, Partner, or any third parties (if any). EXCEPT FOR THE PARTIES' INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND (ii) GOOGLE'S AGGREGATE LIABILITY TO ADVERTISER UNDER THIS AGREEMENT FOR ANY CLAIM IS LIMITED TO THE AMOUNT PAID TO GOOGLE BY ADVERTISER FOR THE AD GIVING RISE TO THE CLAIM. Each party acknowledges that the other party has entered into this Agreement relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties. Without limiting the foregoing and except for payment obligations, neither party shall have any liability for any failure or delay resulting from any condition beyond the reasonable control of such party, including but not limited to governmental action or acts of terrorism, earthquake or other acts of God, labor conditions, and power failures.

**11. Payment.** You agree to pay all applicable charges under this Agreement, including any applicable taxes or charges imposed by any government entity, and that Google may change its minimum pricing at any time, as reflected in the FAQs. If you dispute any charge made under the Program, you must notify Google in writing within sixty (60) days of any such charge; failure to so notify Google shall result in the waiver by you of any claim relating to any such disputed charge. Charges shall be calculated solely based on records maintained by Google. No other

## ADWORDS SELECT STANDARD TERMS AND CONDITIONS

measurements or statistics of any kind shall be accepted by Google or have any effect under this Agreement.

12. Representations and Warranties. You represent and warrant that (a) all of the information provided by you to Google to enroll in the Program is correct and current; (b) you hold all rights to permit Google and any Partner(s) to use, reproduce, display, transmit and distribute ("Use") your ad(s); and (c) Google's and any Partner(s) Use, your Target(s), and any site(s) linked to, and products or services to which users are directed, will not, in any state or country where the ad is displayed (i) violate any criminal laws or third party rights giving rise to civil liability, including but not limited to trademark rights or rights relating to the performance of music; or (ii) encourage conduct that would violate any criminal or civil law. You further represent and warrant that any Web site linked to your ad(s) (i) complies with all laws and regulations in any state or country where the ad is displayed; (ii) does not breach and has not breached any duty toward or rights of any person or entity including, without limitation, rights of publicity or privacy, or rights or duties under consumer protection, product liability, tort, or contract theories; and (iii) is not false, misleading, defamatory, libelous, slanderous or threatening.

13. Your Obligation to Indemnify. You agree to indemnify, defend and hold Google, its agents, affiliates, subsidiaries, directors, officers, employees, and applicable third parties (e.g., all relevant Partner(s), licensors, licensees, consultants and contractors) ("Indemnified Person(s)") harmless from and against any and all third party claims, liability, loss, and expense (including damage awards, settlement amounts, and reasonable legal fees), brought against any Indemnified Person(s), arising out of, related to or which may arise from your use of the Program, your Web site, and/or your breach of any term of this Agreement. Customer understands and agrees that each Partner, as defined herein, has the right to assert and enforce its rights under this

Section directly on its own behalf as a third party beneficiary.

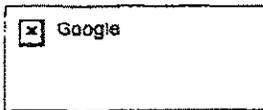
14. Information Rights. Google may retain and use for its own purposes all information you provide, including but not limited to Targets, URLs, the content of ads, and contact and billing information. Google may share aggregate (i.e., not personally identifiable) information about you with advertisers, business partners, including syndication Partners, sponsors, and other third parties. If you elect to participate in the syndication program, the display of your ad on Partner Site(s) will provide access to Partner(s) to the content of your ads, including the URL(s), and any contact or other information that can be obtained through such URL(s), as well as data regarding queries or clicks on directory categories that may enable such Partner(s) to determine your Targets.

15. Miscellaneous. Any decision made by Google under this Agreement shall be final. Google shall have no liability for any such decision. You will be responsible for all reasonable expenses (including attorneys' fees) incurred by Google in collecting unpaid amounts under this Agreement. This Agreement shall be governed by the laws of California, except for its conflicts of laws principles. Any dispute or claim arising out of or in connection with this Agreement shall be adjudicated in Santa Clara County, California. This constitutes the entire agreement between the parties with respect to the subject matter hereof. Any modifications to this Agreement must be made in a writing executed by both parties. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default. If any provision herein is held unenforceable, then such provision will be modified to reflect the parties' intention, and the remaining provisions of this Agreement will remain in full force and effect. Advertiser may not resell, assign, or transfer any of its rights

**ADWORDS SELECT STANDARD TERMS AND CONDITIONS**

hereunder. Any such attempt may result in termination of this Agreement, without liability to Google. The relationship(s) between Google and the "Partners" is not one of a legal partnership relationship, but is one of independent contractors. This Agreement shall be construed as if both parties jointly wrote it.

BY CLICKING ON THE BUTTON BELOW, THE PERSON DOING SO REPRESENTS AND WARRANTS THAT (i) HE OR SHE IS 18 YEARS OF AGE OR OLDER; (ii) HE OR SHE HAS THE POWER AND AUTHORITY TO BIND ADVERTISER; (iii) ADVERTISER HAS READ AND UNDERSTANDS THIS AGREEMENT; AND (iv) ADVERTISER ACCEPTS THIS AGREEMENT.



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## Google Inc. AdWords Program Terms

These Google Inc. AdWords Program Terms ("Terms") are entered into by you and Google Inc. ("Google") regarding the Google AdWords Program ("Program") as further described in the Programmers frequently asked questions at <https://adwords.google.com/support> (the "FAQs") (collectively, the "Agreement"). You represent and warrant that you are authorized to act on behalf of, and bind to this Agreement, any third party for which you generate ads. This translation is provided for convenience only, and you agree that in the event of a conflict between this translated version and the U.S. English version located at <https://adwords.google.com/select/TCUSBilling.html> ("Original Version"), the Original Version shall govern. You hereby agree and acknowledge:

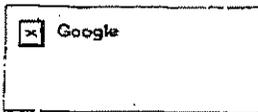
1. **Policies.** Program use is subject to all applicable Google and Partner policies, including without limitation the Editorial Guidelines ([adwords.google.com/select/guidelines.html](https://adwords.google.com/select/guidelines.html)), Google Privacy Policy ([www.google.com/privacy.html](http://www.google.com/privacy.html)) and Trademark Guidelines ([www.google.com/permissions/trademarks.html](http://www.google.com/permissions/trademarks.html)). Policies may be modified any time. You shall direct only to Google communications regarding your ads on Partner Properties. Some Program features are identified as "Beta," "Ad Experiment," or otherwise unsupported ("Beta Features"). Beta Features are provided "as is" and at your option and risk. You shall not disclose to any third party any information from, existence of or access to Beta Features. Google may modify ads to comply with any Google Property or Partner Property policies.
2. **The Program.** You are solely responsible for all: (a) keywords; and ad targeting options (collectively "Targets") and all ad content and ad URLs ("Creative"), whether generated by or for you; and (b) web sites proximately reachable from Creative URLs and your services and products (collectively "Services"). You shall protect your passwords and take full responsibility for your own, and third party, use of your accounts. Ads may be placed on (y) any content or property provided by Google ("Google Property"), and unless opted-out by you (z) any other content or property provided by a third party ("Partner") upon which Google places ads ("Partner Property"). Google and Partners may reject or remove any ad or Target for any or no reason. You may independently cancel online any campaign at any time (such cancellation is generally effective within 24 hours). Google may cancel immediately any ad, IO, the Program or these Terms at any time with notice (additional notice is not required to cancel a reactivated account). Sections 1, 2, 4, 5, 6 and 7 will survive any expiration or termination of this Agreement.
3. **Prohibited Uses.** You shall not, and shall not authorize any party to: (a) generate automated or fraudulent impressions or clicks; or (b) advertise anything illegal or engage in any illegal or fraudulent business practice in any state or country where your ad is displayed. You represent and warrant that (x) all your information is correct and current; (y) you hold and grant Google and Partners all rights to copy, distribute and display your ads and Targets ("Use"); and (z) such Use and websites linked from your ads (including services or products therein) will not violate or encourage violation of any applicable laws. Violation of these policies may result in immediate termination of this Agreement or your account without notice and may subject you to legal penalties and consequences.
4. **Disclaimer and Limitation of Liability.** GOOGLE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION FOR NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PURPOSE. Google disclaims all guarantees regarding the levels or timing of costs per click, click through rates or delivery of any impressions, positioning, clicks or conversions for any ads or Targets. EXCEPT FOR INDEMNIFICATION AMOUNTS PAYABLE TO THIRD PARTIES HEREUNDER: (a) NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY; AND (b) EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER IS LIMITED TO AMOUNTS PAID OR PAYABLE TO GOOGLE BY YOU FOR THE AD GIVING RISE TO THE CLAIM. Except for payment, neither party is liable for failure or delay resulting from a condition beyond the reasonable control of the party, including but not limited to acts of God, government, terrorism, natural disaster, labor conditions and power failures.
5. **Payment.** You shall be charged based on actual clicks and pay all charges in U.S. Dollars, or such other currency specified

in writing by Google. Charges are exclusive of taxes. You are responsible for paying (y) all taxes and government charges, and (z) reasonable expenses and attorney fees Google incurs collecting late amounts. You waive all claims relating to charges unless claimed within 60 days after the charge (this does not affect your credit card issuer rights). Charges are solely based on Google's click measurements. Refunds (if any) are at the discretion of Google and only in the form of advertising credit for Google Properties. You acknowledge and agree that any credit card and related billing and payment information that you provide to Google may be shared by Google with companies who work on Google's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to Google and servicing your account. Google may also provide information in response to valid legal process, such as subpoenas, search warrants and court orders, or to establish or exercise its legal rights or defend against legal claims. Google shall not be liable for any use or disclosure of such information by such third parties.

6. **Indemnification.** You shall indemnify, defend and hold Google, its agents, affiliates, and licensors harmless from any third party claim or liability (including without limitation reasonable legal fees) arising out of your Program use, Targets, Creative and Services and breach of the Agreement. Partners may assert and enforce this Section 6 as a third party beneficiary.
7. **Miscellaneous.** The Agreement must be construed as if both parties jointly wrote it, governed by California law except for its conflicts of laws principles and adjudicated in Santa Clara County, California. The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Any conflicting or additional terms contained in additional documents (e.g. reference to a purchase order number) or oral discussion are void. You may grant approvals, permissions and consents by email, but any modifications to the Agreement must be made in a writing (not including email) executed by both parties. Any notices to Google must be sent to: Google Inc., AdWords Program, 1600 Amphitheatre Parkway, Mountain View, CA 94043 USA, with a copy to the Legal Department, via first class or air mail or overnight courier, and are deemed given upon receipt. Notice to you is acceptable by sending email to your specified email address and is deemed received when sent. A waiver of any default is not a waiver of any subsequent default. Unenforceable provisions will be modified to reflect the parties' intention, and remaining provisions of the Agreement will remain in full effect. You may not assign any of your rights hereunder and any such attempt is void. Google and you and Google and Partners are not legal partners or agents, but are independent contractors.

June 9, 2004

**EXHIBIT C**



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Please read the following carefully: all on-line advertisers and agencies whose billing addresses as provided to Google are located outside of Europe, the Middle East and Africa (collectively, "EMEA"), and Asia Pacific, excluding Japan (as defined as "APAC"), are subject to the immediately following [Google AdWords Program Standard Terms and Conditions \(Google Inc.\)](#). All advertisers and agencies whose billing addresses as provided to Google are located in EMEA or APAC are subject to the [Google AdWords Program Standard Terms and Conditions \(Google Ireland Limited\)](#) immediately thereafter in which the contracting entity is Google Ireland Limited.

## Google AdWords Program Standard Terms and Conditions (Google Inc.)

**Introduction.** This Agreement between You and Google Inc. ("Google") consists of these AdWords Standard Terms and Conditions ("Terms and Conditions") and the Google AdWords Program (the "Program") [Frequently Asked Questions \("FAQs"\)](#). "You" or "Advertiser" means any entity identified in an enrollment form submitted by the same or affiliated persons, and/or any agency acting on its (or their) behalf, which shall also be bound by the terms of this Agreement. If You are an agency, You also represent and warrant that (1) the advertiser on whose behalf You are acting has authorized You to enter into this Agreement and to assume the obligations under this Agreement on such advertiser's behalf and to represent such advertiser within the scope of this Agreement and the Program, and (2) such advertiser agrees to be bound by the terms of this agreement, including but not limited to paying Google for advertisements delivered pursuant to this Agreement. Please read very carefully these Terms and Conditions and the Program FAQs.

1. **Uses.** You agree that Your ads may be placed on (i) any Web site, application or other property owned or operated by Google (a "Google Property") and (ii) any Web site, application or other property owned or operated by a third party (a "Partner") upon which Google places AdWords ads pursuant to a contractual agreement ("Partner Property"), unless You opt out of the applicable syndication program(s) described in the FAQs. Google and/or any Partner may review, reject or remove any ad (including any Target (as defined below)) for any reason. In addition, ads may be modified to comply with policies related to any Google Property or any Partner Property, and (if applicable) where You have authorized Google to optimize campaign performance generally through the use of Google's ad optimization services.
2. **Partner Properties.** Even if Your ad(s) are placed on Partner Property(ies), You agree to direct to Google, and not to any Partner, any communication regarding Your ad(s) on any Partner Property. In addition, if You participate in any syndication program(s) by having Your ads displayed on Partner Properties, the display of Your ads on Partner Property(ies) will provide Partner(s) with access to the content of Your ads, including the URL(s), and any contact or other information that can be obtained through such URL(s), as well as data regarding queries or clicks on directory categories.
3. **AdWords FAQs.** You acknowledge and agree that in order for Google to (among other things) maintain the integrity and dynamic nature of the Program, Your participation in the Program is subject to the FAQs, which are incorporated into these Terms and Conditions by reference and may be modified by Google at any time to reflect changes in how Google makes the Program generally commercially available.
4. **Conversion Tracking.** If as part of the Program You opt to use Google's conversion tracking feature as described in the conversion tracking FAQs, You are solely responsible for following all instructions to activate conversion tracking on Your web page. Such activation will result in a visible conversion tracking image (in the form provided by Google), which must be made visible to Your customers at all times. In order to ensure user awareness of such conversion tracking image, You agree not to hide, obscure, modify or reduce the image in any way. Failure to comply with the terms of this section may result in Google's inability to provide the conversion tracking feature. You are solely responsible for all use of the conversion tracking feature.
5. **Targets; Your Web Site(s).** You are solely responsible for knowing the contents of the FAQs. You are solely responsible for all "Targets" (any keyword, negative keyword, category, and other targeting mechanism), and for the content of Your ads, including URL links. Google is not responsible for anything related to Your Web site(s).
6. **Prohibited Uses.** Google strictly prohibits using any Google Property, any Partner Property, or any third-party technology: (i) to generate fraudulent impressions of or fraudulent clicks on Advertiser's ad(s) or third-party ad(s), including but not limited to using robots or other automated query tools and/or computer generated search requests, and/or the fraudulent use of other search engine optimization services and/or software; (ii) to advertise substances, services, products or materials that are illegal in any state or country where Your ad is displayed; (iii) in any way that violates any policy posted on any Google Property, as revised from time to time; or (iv) to engage in any other illegal or fraudulent business practice under the laws of any state or country where Your ad is displayed. You may not include links to any Web site(s) as part of Your ad, unless the content found at such site(s) is relevant to Your Target(s) and/or ad creative. You may not run multiple ads linking to the same or similar site on the same search results page. Violation of these policies

- may result in immediate termination of this Agreement without notice, and may subject You to state and federal penalties and other legal consequences.
7. **Termination; Cancellation.** Unless otherwise agreed to in writing by the parties, You may cancel or delete any ad and/or terminate this Agreement with or without cause at any time by canceling or deleting all ads hereunder via Your online account by changing the end dates of such ad(s) to Your desired cancellation date or by deleting the ads You no longer wish to run; provided, however, that a cancelled ad may continue to run for up to 48 hours before such cancellation takes effect. Google may at any time terminate the Program, terminate this Agreement, or cancel any ad(s) or Your use of any Target. Except as set forth in Section 6 above or unless Google has previously canceled or terminated Your use of the Program (in which case subsequent notice by Google shall not be required), Google will notify You via email of any such termination or cancellation, which shall be effective immediately. Upon cancellation of any ad or termination or expiration of this Agreement for any reason, (i) You shall remain liable for any amount due for clicks already delivered and for clicks on any ad(s) through the date such cancellation or termination takes effect, and (ii) Sections 2 and 5 through 15 shall survive expiration or termination.
  8. **Confidentiality.** During the term of this Agreement and for a period of two years following the termination or expiration of this Agreement, each party agrees not to disclose Confidential Information of the other party to any third party without prior written consent except as provided herein. "Confidential Information" includes (i) ads (including Targets and URLs), prior to publication, (ii) except as provided in subsection (i) above, any other Program information or access to technology prior to public disclosure provided by Google to You and identified at the time of disclosure in writing as "Confidential." It does not include information that has become publicly known through no breach by a party, or has been (i) independently developed without access to the other party's Confidential Information; (ii) rightfully received from a third party; or (iii) required to be disclosed by law or by a governmental authority. Nothing in this Agreement shall prohibit or limit either party's use or disclosure of the U.S. Federal income tax treatment and U.S. Federal income tax structure of any transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment or tax structure, except where confidentiality is necessary to comply with applicable federal or state securities laws.
  9. **No Guarantee.** Google makes no guarantee regarding the levels of impressions, clicks or conversions for any ad (including any Target) or group of ads or the timing of delivery of any impressions, clicks or conversions for any ad displayed on any Google Property or any Partner Property. Google may offer the same Target to more than one advertiser. You may not receive any impressions for Your ad(s) if for a given Target there are more advertisers or ads than available display positions or if Your ads do not meet applicable click-through thresholds.
  10. **No Warranty.** GOOGLE MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH RESPECT TO ADVERTISING AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.
  11. **Limitation of Liability; Force Majeure.** EXCEPT FOR ANY INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND (ii) GOOGLE'S AGGREGATE LIABILITY TO ADVERTISER UNDER THIS AGREEMENT FOR ANY CLAIM IS LIMITED TO THE AMOUNT PAID TO GOOGLE BY ADVERTISER FOR THE AD GIVING RISE TO THE CLAIM. Each party acknowledges that the other party has entered into this Agreement relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties. Without limiting the foregoing and except for payment obligations, neither party shall have any liability for any failure or delay resulting from any condition beyond the reasonable control of such party, including but not limited to governmental action or acts of terrorism, earthquake or other acts of God, labor conditions, and power failures.
  12. **Payment.** You agree to pay all applicable charges under this Agreement, including any applicable taxes or charges imposed by any government entity, and that Google may change its minimum pricing at any time, as reflected in the FAQs. If You dispute any charge made under the Program, You must notify Google in writing within sixty (60) days of any such charge; failure to so notify Google shall result in the waiver by You of any claim relating to any such disputed charge. Charges shall be calculated solely based on invoicing records maintained by Google for purposes of billing. No other measurements or statistics of any kind shall be accepted by Google or have any effect under this Agreement.
  13. **Representations and Warranties.** You represent and warrant that (a) all of the information provided by You to Google to enroll in the Program is correct and current; (b) You hold all rights to permit Google and any Partner(s) to use, reproduce, display, transmit and distribute Your ad(s) (including all Targets) and all contents therein ("Use"); and (c) the following items will not violate (or encourage conduct that would violate) any applicable laws, regulations or third party rights in any state or country in which Your ad is displayed: any Use by Google or any Partner(s), Your Target(s), any Web site(s) linked to from Your ad(s), and products or services offered on such Web site(s).

14. **Your Obligation to Indemnify.** You agree to indemnify, defend and hold Google, its agents, affiliates, subsidiaries, directors, officers, employees, and applicable third parties (e.g., all relevant Partner(s), licensors, licensees, consultants and contractors) ("Indemnified Person(s)") harmless from and against any third party claim, liability, loss, and expense (including damage awards, settlement amounts, and reasonable legal fees), brought against any Indemnified Person(s), arising out of Your use of the Program, Your Web site, and/or Your breach of any term of this Agreement. You acknowledge and agree that each Partner, as defined herein, has the right to assert and enforce its rights under this Section directly on its own behalf as a third party beneficiary.
15. **Miscellaneous.** You will be responsible for all reasonable expenses (including attorneys' fees) incurred by Google in collecting unpaid amounts under this Agreement. This Agreement shall be governed by the laws of California, except for its conflicts of laws principles. Any dispute or claim arising out of or in connection with this Agreement shall be adjudicated in Santa Clara County, California. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and any non-Google purchase order, invoice or other document relating to the subject matter hereof and any additional terms contained therein shall be null and void. Each party hereto is duly authorized to enter into this Agreement and perform its obligations hereunder. Any modifications to this Agreement must be made in a writing approved by the Google Legal Department and executed by both parties. Unless otherwise expressly set forth herein, any notices shall be sent to (a) in the case of Google: c/o Google Inc., Attn: AdWords Program, 2400 Bayshore Parkway, Mountain View, CA 94043, with a copy to the Google Legal Department; and (b) in the case of Advertiser, to the address then on record with Google for Your account. Notice shall be given via (x) confirmed facsimile, with a copy sent via first class or air mail; or (y) overnight courier, and such notice shall be deemed given upon receipt. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default. If any provision herein is held unenforceable, then such provision will be modified to reflect the parties' intention, and the remaining provisions of this Agreement will remain in full force and effect. Advertiser may not resell, assign, or transfer any of its rights hereunder. Any such attempt may result in termination of this Agreement, without liability to Google. The relationship(s) between Google and the "Partners" is not one of a legal partnership relationship, but is one of independent contractors. This Agreement shall be construed as if both parties jointly wrote it.

October 23, 2003

## Google AdWords Program Standard Terms and Conditions (Google Ireland Limited)

**Introduction.** This Agreement between You and Google Ireland Limited ("Google") consists of these AdWords Standard Terms and Conditions ("Terms and Conditions") and the Google AdWords Program (the "Program") [Frequently Asked Questions](#) ("FAQs"). "You" or "Advertiser" means any entity identified in an enrollment form submitted by the same or affiliated persons, and/or any agency acting on its (or their) behalf, which shall also be bound by the terms of this Agreement. If You are an agency, You also represent and warrant that (1) the advertiser on whose behalf You are acting has authorized You to enter into this Agreement and to assume the obligations under this Agreement on such advertiser's behalf and to represent such advertiser within the scope of this Agreement and the Program, and (2) such advertiser agrees to be bound by the terms of this agreement, including but not limited to paying Google for advertisements delivered pursuant to this Agreement. Please read very carefully these Terms and Conditions and the Program FAQs.

- Uses.** You agree that Your ads may be placed on (i) any Web site, application or other property owned or operated by Google (a "Google Property") and (ii) any Web site, application or other property owned or operated by a third party (a "Partner") upon which Google places AdWords ads pursuant to a contractual agreement ("Partner Property"), unless You opt out of the applicable syndication program(s) described in the FAQs. Google and/or any Partner may review, reject or remove any ad (including any Target (as defined below)) for any reason. In addition, ads may be modified to comply with policies related to any Google Property or any Partner Property, and (if applicable) where You have authorized Google to optimize campaign performance generally through the use of Google's ad optimization services.
- Partner Properties.** Even if Your ad(s) are placed on Partner Property(ies), You agree to direct to Google, and not to any Partner, any communication regarding Your ad(s) on any Partner Property. In addition, if You participate in any syndication program(s) by having Your ads displayed on Partner Properties, the display of Your ads on Partner Property(ies) will provide Partner(s) with access to the content of Your ads, including the URL(s), and any contact or other information that can be obtained through such URL(s), as well as data regarding queries or clicks on directory categories.
- AdWords FAQs.** You acknowledge and agree that in order for Google to (among other things) maintain the integrity and dynamic nature of the Program, Your participation in the Program is subject to the FAQs, which are incorporated into these Terms and Conditions by reference and may be modified by Google at any time to reflect changes in how Google makes the Program generally commercially available.
- Conversion Tracking.** If as part of the Program You opt to use Google's conversion tracking feature as described in the conversion tracking FAQs, You are solely responsible for following all instructions to activate conversion tracking on Your web page. Such activation will result in a visible conversion tracking image (in the form provided by Google), which must be made visible to Your

4/5/2005

- customers at all times. In order to ensure user awareness of such conversion tracking image, You agree not to hide, obscure, modify or reduce the image in any way. Failure to comply with the terms of this section may result in Google's™ inability to provide the conversion tracking feature. You are solely responsible for all use of the conversion tracking feature.
5. **Targets; Your Web Site(s).** You are solely responsible for knowing the contents of the FAQs. You are solely responsible for all "Targets" (any keyword, negative keyword, category, and other targeting mechanism), and for the content of Your ads, including URL links. Google is not responsible for anything related to Your Web site(s).
  6. **Prohibited Uses.** Google strictly prohibits using any Google Property, any Partner Property, or any third-party technology: (i) to generate fraudulent impressions of or fraudulent clicks on Advertiser's ad(s) or third-party ad(s), including but not limited to using robots or other automated query tools and/or computer generated search requests, and/or the fraudulent use of other search engine optimization services and/or software; (ii) to advertise substances, services, products or materials that are illegal in any state or country where Your ad is displayed; (iii) in any way that violates any policy posted on any Google Property, as revised from time to time; or (iv) to engage in any other illegal or fraudulent business practice under the laws of any state or country where Your ad is displayed. You may not include links to any Web site(s) as part of Your ad, unless the content found at such site(s) is relevant to Your Target(s) and/or ad creative. You may not run multiple ads linking to the same or similar site on the same search results page. Violation of these policies may result in immediate termination of this Agreement without notice, and may subject You to state and federal penalties and other legal consequences.
  7. **Termination; Cancellation.** Unless otherwise agreed to in writing by the parties, You may cancel or delete any ad and/or terminate this Agreement with or without cause at any time by canceling or deleting all ads hereunder via Your online account by changing the end dates of such ad(s) to Your desired cancellation date or by deleting the ads You no longer wish to run; provided, however, that a cancelled ad may continue to run for up to 48 hours before such cancellation takes effect. Google may at any time terminate the Program, terminate this Agreement, or cancel any ad(s) or Your use of any Target. Except as set forth in Section 6 above or unless Google has previously canceled or terminated Your use of the Program (in which case subsequent notice by Google shall not be required), Google will notify You via email of any such termination or cancellation, which shall be effective immediately. Upon cancellation of any ad or termination or expiration of this Agreement for any reason, (i) You shall remain liable for any amount due for clicks already delivered and for clicks on any ad(s) through the date such cancellation or termination takes effect, and (ii) Sections 2 and 5 through 15 shall survive expiration or termination.
  8. **Confidentiality.** During the term of this Agreement and for a period of two years following the termination or expiration of this Agreement, each party agrees not to disclose Confidential Information of the other party to any third party without prior written consent except as provided herein. "Confidential Information" includes (i) ads (including Targets and URLs), prior to publication, (ii) except as provided in subsection (i) above, any other Program information or access to technology prior to public disclosure provided by Google to You and identified at the time of disclosure in writing as "Confidential." It does not include information that has become publicly known through no breach by a party, or has been (i) independently developed without access to the other party's Confidential Information; (ii) rightfully received from a third party; or (iii) required to be disclosed by law or by a governmental authority. Nothing in this Agreement shall prohibit or limit either party's use or disclosure of the U.S. Federal income tax treatment and U.S. Federal income tax structure of any transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment or tax structure, except where confidentiality is necessary to comply with applicable federal or state securities laws.
  9. **No Guarantee.** Google makes no guarantee regarding the levels of impressions, clicks or conversions for any ad (including any Target) or group of ads or the timing of delivery of any impressions, clicks or conversions for any ad displayed on any Google Property or any Partner Property. Google may offer the same Target to more than one advertiser. You may not receive any impressions for Your ad(s) if for a given Target there are more advertisers or ads than available display positions or if Your ads do not meet applicable click-through thresholds.
  10. **No Warranty.** GOOGLE MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH RESPECT TO ADVERTISING AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.
  11. **Limitation of Liability; Force Majeure.** EXCEPT FOR ANY INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND (ii) GOOGLE'S AGGREGATE LIABILITY TO ADVERTISER UNDER THIS AGREEMENT FOR ANY CLAIM IS LIMITED TO THE AMOUNT PAID TO GOOGLE BY ADVERTISER FOR THE AD GIVING RISE TO THE CLAIM. Each party acknowledges that the other party has entered into this Agreement relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties. Without limiting the foregoing and except for payment obligations, neither party shall have any liability for any failure or delay resulting from any condition beyond the reasonable control of such party, including but not limited to governmental

action or acts of terrorism, earthquake or other acts of God, labor conditions, and power failures.

12. **Payment.** You agree to pay all applicable charges under this Agreement, including any applicable taxes or charges imposed by any government entity, and that Google may change its minimum pricing at any time, as reflected in the FAQs. If You dispute any charge made under the Program, You must notify Google in writing within sixty (60) days of any such charge; failure to so notify Google shall result in the waiver by You of any claim relating to any such disputed charge. Charges shall be calculated solely based on invoicing records maintained by Google for purposes of billing. No other measurements or statistics of any kind shall be accepted by Google or have any effect under this Agreement.
13. **Representations and Warranties.** You represent and warrant that (a) all of the information provided by You to Google to enroll in the Program is correct and current; (b) You hold all rights to permit Google and any Partner(s) to use, reproduce, display, transmit and distribute Your ad(s) (including all Targets) and all contents therein ("Use"); and (c) the following items will not violate (or encourage conduct that would violate) any applicable laws, regulations or third party rights in any state or country in which Your ad is displayed: any Use by Google or any Partner(s), Your Target(s), any Web site(s) linked to from Your ad(s), and products or services offered on such Web site(s).
14. **Your Obligation to Indemnify.** You agree to indemnify, defend and hold Google, its agents, affiliates, subsidiaries, directors, officers, employees, and applicable third parties (e.g., all relevant Partner(s), licensors, licensees, consultants and contractors) ("Indemnified Person(s)") harmless from and against any third party claim, liability, loss, and expense (including damage awards, settlement amounts, and reasonable legal fees), brought against any Indemnified Person(s), arising out of Your use of the Program, Your Web site, and/or Your breach of any term of this Agreement. You acknowledge and agree that each Partner, as defined herein, has the right to assert and enforce its rights under this Section directly on its own behalf as a third party beneficiary.
15. **Miscellaneous.** You will be responsible for all reasonable expenses (including attorneys' fees) incurred by Google in collecting unpaid amounts under this Agreement. This Agreement shall be governed by the laws of California, except for its conflicts of laws principles. Any dispute or claim arising out of or in connection with this Agreement shall be adjudicated in Santa Clara County, California. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and any non-Google purchase order, invoice or other document relating to the subject matter hereof and any additional terms contained therein shall be null and void. Each party hereto is duly authorized to enter into this Agreement and perform its obligations hereunder. Any modifications to this Agreement must be made in a writing approved by the Google Legal Department and executed by both parties. Unless otherwise expressly set forth herein, any notices shall be sent to (a) in the case of Google: c/o Google Ireland Limited, Seagrave House, 19/20 Earlsfort Terrace, Dublin 02, Ireland, with a copy to the Google Legal Department; and (b) in the case of Advertiser, to the address then on record with Google for Your account. Notice shall be given via (x) confirmed facsimile, with a copy sent via first class or air mail; or (y) overnight courier, and such notice shall be deemed given upon receipt. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default. If any provision herein is held unenforceable, then such provision will be modified to reflect the parties' intention, and the remaining provisions of this Agreement will remain in full force and effect. Advertiser may not resell, assign, or transfer any of its rights hereunder. Any such attempt may result in termination of this Agreement, without liability to Google. The relationship(s) between Google and the "Partners" is not one of a legal partnership relationship, but is one of independent contractors. This Agreement shall be construed as if both parties jointly wrote it.

October 23, 2003

**EXHIBIT B**



## RESEARCH BRIEF (Click Fraud)

Date: 6/30/2005

**Topic:** Click Fraud — Our research indicates that as much as 30% of paid search traffic may be fraudulent.

We recently released the audio recording of our clinic on this topic. You can listen to a recording of this clinic here:

Click Fraud (Windows Media Audio)  
<http://meclabs.com/cgi-bin/pl/pl.cgi?c5w>

Click Fraud (RealMedia)  
<http://meclabs.com/cgi-bin/pl/pl.cgi?c5r>

This research brief will answer the following questions:

1. What is click fraud?
2. How significant is the problem of click fraud?
3. How do you avoid click fraud?



## FINDINGS

### 1. What is click fraud?

Click fraud is generally defined as any paid-for click that originates in a malicious attempt to drain an advertiser's budget. Especially for high-priced search terms, advertisers will sometimes attempt to drive up their competitors' marketing costs by clicking on their ads.

Click fraud is sometimes also motivated by revenue generated by pay-per-click (PPC) engines' affiliate networks. Here, an affiliate is driven by simple greed to run up multiple fraudulent clicks.

Most PPC search engines have systems in place that identify click fraud and then subsequently do not charge the advertiser for the fraudulent clicks. Google, the largest PPC-driven engine, seems to be able to detect rapid, successive clicking from the same person or IP address. However, individuals

or organizations conducting click fraud are using more advanced cloaking technologies that may circumvent these preventive systems.

Google often issues refunds and adjustments based on reported click fraud. The company has also recently implemented more advanced human-based and technology-driven click fraud detection mechanisms.

In the majority of click fraud cases that we have investigated, we have found that click-fraud criminals are using rolling-IP distributed attacks from multiple countries. In addition, it appears that they may have organized human click-fraud campaigns using low-cost third-world labor.

On Google, "impression fraud" is another equally problematic form of click fraud. Impression fraud occurs when criminals manipulate the number of page impressions for a given search term. When an advertiser's relative click-through rate (CTR) decreases, his or her search term can be suspended because of low CTR performance. This creates a window of opportunity for other advertisers. By committing impression fraud, they are able to obtain higher search rankings at lower costs due to the crippled competition.

The revenue that is generated by click fraud varies greatly depending on whom you ask. However it is widely believed that if click fraud were completely eliminated, all of the major PPC engines would suffer a significant blow to revenues and share prices. It is important, however, that these PPC companies realize that maintaining the trust of their advertisers is vital to the long-term health of the industry.

## **2. How significant is the problem of click fraud?**

SEMPO (Search Engine Marketing Professional Organization) recently did a study that shows that many advertisers don't recognize click fraud as a significant problem:

Survey: The Problem of Click Fraud				
Statement	All Advertisers	Advertisers of < 500 Employees	Advertisers of 500+ Employees	Agencies
This is a significant problem we have tracked	6%	10%	0%	4%
It is a moderate problem we have tracked	19%	21%	15%	30%
We have not tracked it much, but we are worried about it	45%	36%	58%	43%
It is not a significant concern	26%	28%	23%	23%
Never heard of it before	5%	5%	4%	0%



**What You Need To UNDERSTAND:** Of those who recognize that click fraud may be a significant problem (70%) only 25% of all advertisers have tracked click fraud.

Source: <http://www.sempo.org/press/click-fraud.php>

To further illustrate the current perception regarding click fraud, we have included a number of excerpted quotes from industry experts and the major press:

"Search engine traffic is among the most valuable traffic to a web marketer due to the state of mind of a searcher. Click fraud, charging marketers for poor quality non-converting clicks, could poison the well..."

-Kevin Lee  
SEMPO.org

"Click fraud is the biggest threat to the Internet economy..."

-George Reyes  
Chief Financial Officer  
Google, Inc.

(As quoted in the Wall Street Journal)

"Anyone who says this is not a real challenge is kidding you..."

-John Slade,  
Senior Director of Product Management  
Yahoo, Inc.

(As quoted in the Wall Street Journal)

We decided to test click fraud. In an attempt to "defraud" Google's AdSense system (the content-based, affiliate-driven element of AdWords), we created a search term that would not receive any other bids. In this way, we could rest assured that our "fraud" would only hurt ourselves.

We bid on the term "daurf kcilc" ("click fraud" spelled backwards) and created an ad:

\*\*\*\*\*

The Latest Spy Equipment

Bug Your Neighbor

Literally

[www.marketplacesnapshot.com](http://www.marketplacesnapshot.com)

\*\*\*\*\*

We then attempted to create an AdSense page that would serve this ad:

<http://www.marketplacesnapshot.com/duarfkcilc.html>

However, we never managed to get the AdSense account to serve our ad for "daurf kcilc", even though it was the only ad for that search term.

So we moved on to just searching for "daurf kcilc" on Google's main site. Now we were able to pull up our ad and attempt to run up fraudulent clicks. Here are the results of those efforts:

Attempted Click Fraud on Google AdWords		
Click Fraud Attempt	Successive Clicks	Clicks Registered by Google
Individual clicking on the ad	10	0
Individual clicking on the ad with Anonymizer	10	1
Clicking on the ad with a different computer, same IP address	10	1
Clicking on the ad with a different computer, different IP address	10	1



**What You Need To UNDERSTAND:** Based on this test, it does not appear that a competing individual or company could do too much damage to someone simply by clicking on your ad over and over.

These results were encouraging. However, they do not address the larger problem of individuals or companies defrauding the PPC system with more sophisticated software or organizational efforts (such as third-world labor).

South African search firm Incubeta.com has developed a unique click-tracking tool that creates and measures a unique click ID for each click. This ID is created based on a number of characteristics that they believe to be statistically significant. This tool was used in creating the three campaigns below.

Specifics of these tested campaigns included:

- All three campaigns ran over a ten day period.
- Duplicates were determined by comparing IP address, language, browser settings, referring URL, time of click, operating system, browser plug-ins, and country.
- Campaign A was implemented for a finance company with a high-end (\$1.00-\$2.00) cost-per-click (CPC), Campaign B was for a travel company with a mid-range (\$0.20-\$0.30) CPC, and campaign C was for a "jobs" company with a low (\$0.05-\$0.15) CPC.

<b>Documented Click Fraud for Three Google AdWords Campaigns</b>			
	<b>Campaign A</b>	<b>Campaign B</b>	<b>Campaign C</b>
Total Clicks	34,763	12,790	4,184
Duplicate Clicks	10,268	1,257	349
Alleged Click Fraud	29.5%	9.8%	8.3%
Clicks Billed By Google	34,758	12,671	4,130
Google Credits	- 5	- 119	- 54
Non-Credited Fraudulent Clicks	10,263	1,138	295
Cost to Advertiser	\$15,394.50	\$284.50	\$29.50



**What You Need To UNDERSTAND:** This random sample showed as much as 29.5% fraud. Fraud increased as the bid price increased. Google only seemed to detect a very small percentage of fraud.

**KEY POINT:** Data indicates that the potential for significant click fraud increases proportionately to the bid price.

This data clearly indicates that click fraud may be a larger problem than the major online search engines admit. Until more information becomes available, PPC advertisers will have to remain vigilant against the dangers of PPC fraud.

### **3. How do you avoid click fraud?**

A business owner can combat click fraud and impression fraud in a number of ways:

1. Carefully monitor rapid drops in website conversion with corresponding spikes in paid search traffic. This type of rapid change in metrics could indicate someone or something is manipulating your search campaign. Large amounts of click traffic with no new sales or leads often indicate click fraud, particularly if you have historical data that shows a higher average website conversion rate from the same core search terms.
2. Implement a click-fraud tracking tool. There are several monitoring tools that will look for irregular patterns in your click traffic and flag potential fraud. We have listed a number of these tools in the Literature Review at the end of this report.
3. Be aware of impression fraud. Pay attention to the search terms that have been deactivated in your Google account because of apparent low conversion. If the campaigns have been running for some time successfully and suddenly some of your key terms have been deactivated, it may indicate impression fraud.
4. Report any click fraud to Google so that their fraud team can attempt to identify the source of the fraud. Google has various click fraud screening tools that monitor all click traffic, and they have even more advanced screening tools that their staff uses to identify the source of click fraud. Like SPAM, we believe much of the click fraud comes from just a handful of criminals.
5. Monitor your overall site traffic on a daily basis. By utilizing an accurate web analytics tool you can monitor the quality of your overall traffic and infer potential problems based on trends.
6. The more a PPC engine depends on affiliates for its traffic, the more susceptible it will be to fraud. Traffic quality tends to be better on Google, Yahoo!, and Lycos, for example, because each of these sites has its own branded destination where consumers go to search. However, smaller PPC engines often rely exclusively on partner sites for traffic.

Until more conclusive data becomes available, marketers must remain vigilant against the ongoing potential of lost marketing revenue to click fraud. The aforementioned techniques will help you combat click fraud, which will enable your PPC campaigns to produce the optimum return on investment for your company.

We will continue to evaluate click fraud and will release further research as it becomes available.

**EXHIBIT C**

PiperJaffray

Hot Comment  
March 9, 2006Safa Rashtchy, Sr Research Analyst  
650 838-1347, safa.a.rashtchy@pjc.comAaron M. Kessler, Sr Research Analyst  
650 838-1434, aaron.m.kessler@pjc.comPaul J. Bieber, Research Analyst  
650 838-1378, paul.j.bieber@pjc.com

Piper Jaffray &amp; Co.

Related Companies:	Share Price:
AMZN	36.81
IACI	30.09
YHOO	30.99

Google Inc.  
Outperform(GOOG - \$353.88)  
Volatility: Medium

Technology

**Settlement of Click Fraud Suit Removes Headline Risk****KEY POINTS:**

- **Google Close to Settling Class Action Suit for \$90M.** According to media reports and a posting on the Google corporate blog, Google is close to settling a class action suit relating to click fraud for \$90M. We view the settlement as a positive as it applies to all advertisers since Google implemented its pay-per-click system in 2002. As such, it largely removes the headline risk associated with the click fraud issue from the Google story for a modest amount. The \$90M settlement amount confirms our belief that the click fraud issue is under control and small relative to Google's overall revenue run-rate. We note that the \$90M is less than 1% of annual revenue and substantially lower than the theft/loss rates in other industries. We estimate legal fees of approximately \$5-\$10M to increase general and administrative expenses in the first quarter, and we expect the \$90M in credits to be recorded as a reduction in revenue over the next two quarters. The settlement is not final until approved by the judge.
- **Class Action Settlement Details.** By way of background, Lanes Collectibles filed suit against Google and 10 other search engines in February 2004 for charging advertisers for questionable traffic. According to the proposed settlement, Google will extend the current period of 60 days for which advertisers must notify Google of questionable clicks retroactively to 2002. For all eligible questionable clicks, Google will offer credits that may be used to purchase Google advertising for a total of \$90M (including attorney fees).
- **Inadvertent Disclosure Not Negative.** On March 7, Google filed an 8K detailing an inadvertent disclosure that appeared as speaker notes in a presentation posted to the Google Website. The disclosure indicated that Google expects \$9.5B in 2006 revenue, which is slightly higher than our estimate and in line with the consensus. We do not view the disclosure as a negative as it was written in November and confirms our current revenue estimate.
- **Stock Action.** Google's stock has been under pressure since the company reported 2005 results, while fundamentals of the business have not changed. In fact, we believe this painful period for Google stock will prove to be positive in limiting future volatility. We maintain our long term thesis on Google and would be actively accumulating the stock while it remains under pressure.

**PRICE TARGET AND JUSTIFICATION:**

We maintain our Outperform rating and our \$600 price target (50x 2007E GAAP EPS plus cash).

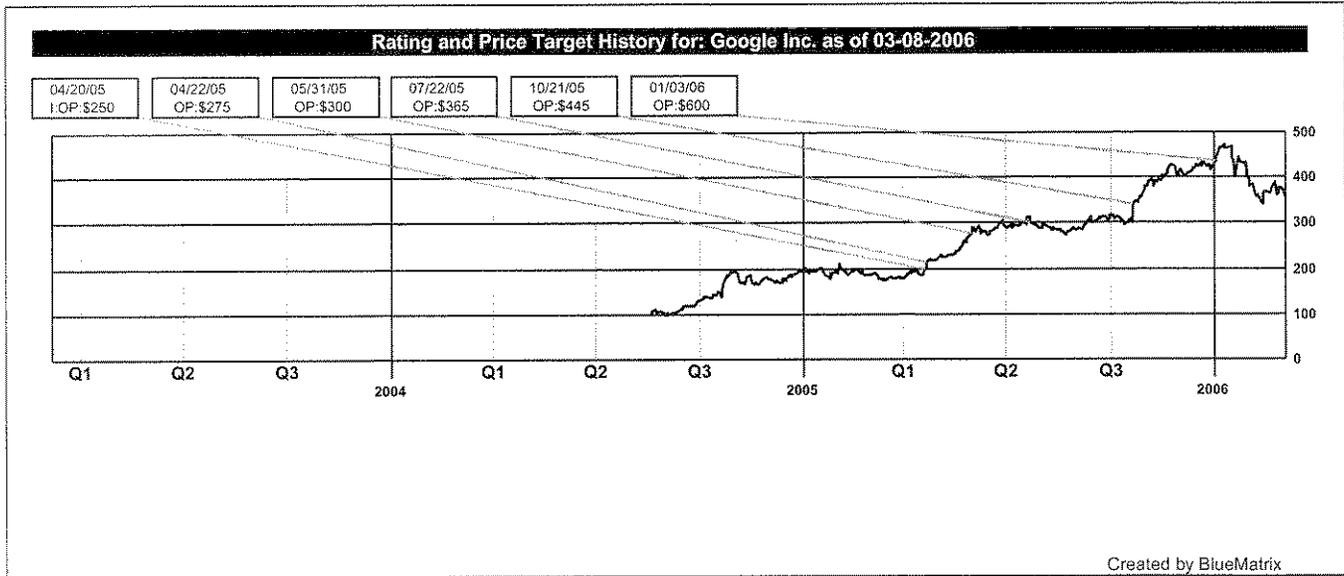
**RISKS TO ACHIEVEMENT OF TARGET PRICE:**

Risks include competition, increasing traffic acquisition costs, loss of key partnerships, and slowing ad/search growth.

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Important Research Disclosures



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Legend:

- I: Initiating Coverage
- D: Discontinuing Coverage
- S: Suspending Coverage
- R: Resuming Coverage
- T: Transferring Coverage
- SB: Strong Buy (effective 01/12/04, Equity Research eliminated the SB rating)
- OP: Outperform
- MP: Market Perform
- UP: Underperform
- NA: Not Available
- UR: Under Review
- GP On: Listed on one of the Guided Portfolios maintained by Piper Jaffray
- GP Off: Removed from the Guided Portfolios maintained by Piper Jaffray

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BUY [OP]	310	53.17	72	23.23
HOLD [MP]	256	43.91	33	12.89
SELL [UP]	17	2.92	3	17.65

Note: Distribution of Ratings/IB Services shows the number of companies in each rating category from which Piper Jaffray and its affiliates received compensation for investment banking services within the past 12 months. NASD and NYSE rules require disclosure of which ratings most closely correspond with "buy," "hold," and "sell" recommendations. Accordingly, Outperform corresponds most closely with buy, Market Perform with hold, and Underperform with sell. Outperform, Market Perform and Underperform, however, are not the equivalent of buy, hold or sell, but instead represent indications of relative performance. See Rating Definitions below. An investor's decision to buy or sell a security must depend on individual circumstances.

## Important Research Disclosures

### Analyst Certification — Safa Rashtchy, Sr Research Analyst

### — Aaron M. Kessler, Sr Research Analyst

The views expressed in this report accurately reflect my personal views about the subject company and the subject security. In addition, no part of my compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in this report.

### Research Disclosures

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- 
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**EXHIBIT D**

# John Battelle's Searchblog

Thoughts on the intersection of search, media, technology, and more.

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« The Search, Audio Version | Main | News: AdWords Now Using Demographics »

March 8, 2006 03:35 PM

## Updated: Google About to Settle Click Fraud Class Action Suit

The company has posted on the topic [here](#). My original posting is [here](#). This is clearly not just about the Lane's suit, it's about Google rejiggering its policies with regard to click fraud.

From Google's post:

*We're very near a resolution in that case, so we thought we'd offer an update.*

*We've been discussing the case with the plaintiffs for some time and have recently come to an agreement with them which we believe is a good outcome for everyone involved. As a result, Google and the plaintiffs are going to ask the judge to approve the settlement, which would resolve the case.*

*Until the settlement is approved by the judge, it is not final. And the details are confidential, but will become public when it is formally filed for the judge's consideration. However, we can share the major pieces of our proposed agreement.*

*Google currently allows advertisers to apply for reimbursement for clicks they believe are invalid. They can do this for clicks that happen during the 60 days prior to notifying Google. Under the agreement with the plaintiffs, we are going to open up that window for all advertisers, regardless of when the questionable clicks occurred. For all eligible invalid clicks, we will offer credits which can be used to purchase new advertising with Google. We do not know how many will apply and receive credits, but under the agreement, the total amount of credits, plus attorneys fees, will not exceed \$90 million.*

What I am not sure I grok is - is this \$90 million set aside only for the plaintiffs in the Lanes' case, or is that the total Google is setting aside for all advertisers, period? I've asked Google for clarification. Seems to me, if they are changing their policy, the claims, and the costs, could go well above \$90 million.

UPDATE: I have confirmation that indeed, this \$90 million covers all US claims. In other words, this is a very small drop in the potential bucket. All US advertisers that have \*ever\* spent money with Google have the right to make a claim, but the total amount of those claims is capped at \$90 million, a pittance compared to the billions that Google has made from AdWords/sense in the last five or so years.

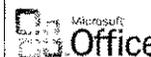
On the one hand, this validates Google's claim that clickfraud is not that big a deal. On the other, Google settled, and relatively quickly, and probably with the knowledge that a quick settlement was far better than a drawn out, public trial that might make the company look, well, defensive at the best. At the worst, it could have meant a terrible PR nightmare, and a hell of a lot more damages than \$90 million. My first take: This settlement is a major victory for Google. Was it good for advertisers? Not sure. But I think the folks at Google are pleased as punch with the deal.

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**EXHIBIT E**

## CLICK FRAUD TAB MAY HIT \$1B

New York Post - New York, N.Y.  
Author: SAM GUSTIN  
Date: Mar 10, 2006  
Start Page: 036  
Section: Business  
Text Word Count: 264

### Document Text

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Google's proposed \$90 million "click fraud" settlement may barely scratch the surface of a widespread problem some Internet experts think costs Web advertisers over \$1 billion annually.

The Web giant said Wednesday that it settled a class-action lawsuit filed last year by Lane's Gifts and Collectibles charging that it knowingly overcharged advertisers who had been victimized by bogus clicks.

Search marketing experts said yesterday that the settlement - while a welcome acknowledgement of the issue and a good business move by Google - isn't a solution to the problem.

"Google is getting out of this on the cheap," said search engine marketing consultant Joe Holcomb. "From a business point of view, it's very smart."

Despite the settlement offer, however, Holcomb said Google is continuing to skirt the fact that revenue derived from bogus clicks contributes to its revenue.

"Search engines have an incentive to let click fraud happen," Holcomb said. "Until Google kills the problem entirely, which can be done, the company is just blowing smoke."

The extent of click fraud - and the cost to advertisers - is unknown, in large part because Google and the other Internet companies that operate ad networks refuse to discuss the issue in anything more than the vaguest of terms.

But many search marketing experts believe that bogus clicks could cost Web advertisers over a billion dollars annually.

"\$90 million is very small compared to the overall problem," said Joseph R. Dupell, CIO of Web marketing company E-Magine Networks. Last year, Web research firm MarketingExperiments.com found almost 30 percent of Google's paid search traffic could be fraudulent.

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### Abstract (Document Summary)

Google's proposed \$90 million "click fraud" settlement may barely scratch the surface of a widespread problem some Internet experts think costs Web advertisers over \$1 billion annually.

Despite the settlement offer, however, [Joe Holcomb] said Google is continuing to skirt the fact that revenue derived from bogus clicks contributes to its revenue.

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