



**Testimony of Kent Walker, Senior Vice President and General Counsel
Google Inc.**

**Before the House Judiciary Subcommittee on Intellectual Property, Competition, and the Internet
Hearing on “Promoting Investment and Protecting Commerce Online:
Legitimate Sites v. Parasites, Part II”
April 6, 2011**

Thank you Chairman Goodlatte, Ranking Member Watt, and members of the Subcommittee for this opportunity to testify.

I am Google’s Senior Vice President and General Counsel. As a former federal prosecutor, I am well aware of the need to enforce laws against the infringement of intellectual property rights, the complexities of such cases, and the fact that the Internet can be used for unlawful purposes, often by sophisticated criminals. As an assistant U.S. Attorney in San Francisco, I specialized in cybercrime and brought one of the first criminal copyright infringement cases in the country. I was also involved in the successful prosecution of a prominent computer hacker.

Google supports developing effective policy and technology tools to combat large-scale commercial infringement. As I’ll describe below, Google has dedicated tens of millions of dollars in engineering and other resources to help weed out notorious bad actors. But such activity accounts for only a very small percentage overall of the creative, political, social, and commercial opportunities created and empowered by the web. As this Subcommittee considers new enforcement tools against rogue foreign websites, it should not jeopardize the legitimate Internet services and technologies that underlie the United States’ lead in the global information economy.

My testimony will focus on three main points. First, I will underscore how the Internet is a critical driver of American economic growth and job creation, and offers enormous benefits to creators. Second, I will highlight the many ways in which Google leads the industry in helping to combat copyright infringement and the sale of counterfeit goods online. Finally, I offer recommendations for addressing the exceedingly complex challenge of rogue foreign websites.

The Internet Drives U.S. Economic Growth and Delivers Enormous Benefits to Creators

Internet technologies are used every day in amazing and perfectly legal ways. Without question, the information technology industry is the fastest growing business sector in the world, regularly experiencing double-digit growth and accounting for nearly one-fourth of our nation’s real GDP growth. The Internet adds an estimated \$2 trillion to annual GDP. Interactive advertising alone is responsible for \$300 billion of economic activity in the U.S., employing 3.1 million Americans.

For just over a decade, Google has invested in the power of the Internet to bring groundbreaking new services and technologies to millions of users around the world. Today we have more than 24,000 employees worldwide, and we recently announced that 2011 will be the biggest hiring year in our company's history. We offer search, advertising, and other products that help other businesses thrive. In 2009, for example, Google estimated that our search and advertising tools generated \$54 billion in economic activity in the U.S. alone.

But the Internet is about much more than just Google or other leading U.S. Internet companies like Facebook, Twitter, Amazon, and eBay. The Internet has been a boon to businesses of every kind and size across the country. The efficiencies of the web reduce transaction costs for suppliers and consumers in every sector, while creating entirely new markets. Thanks to the Internet, it's never been easier to start a business and reach a wide audience. More than a million small and large advertisers use Google as a platform to find customers in an increasingly global marketplace—from Twiddy, a vacation rental business in North Carolina that attributes recent growth and job creation to Google's advertising tools, to two brothers in Austin Texas who use Google to grow loyalty and demand for premium YETI Coolers, certified to withstand smashing by hungry grizzly bears.

The innovations brought about by the Internet economy have also delivered enormous benefits to content creators. Google empowers traditional artists and an emerging generation of new creators to promote their work to a global audience. Google drives traffic to creators' websites, sending, for example, four billion clicks a month to news sites. Every minute, users upload 35 hours of video content to our YouTube site. YouTube has allowed performers to rocket from oblivion to fame; has given politicians, pundits, and protesters a powerful new way to communicate; has facilitated citizen journalism; and has inspired laughter at the antics of dancing babies.

From its startup phase in 2005, YouTube is now monetizing for content owners over 3 billion video views per week. We create revenue for more than 20,000 partners, including mainstream media companies like ABC and Univision and individual members of the YouTube partner program, hundreds of whom are making more than six figures a year. Record labels are now making millions of dollars a month on YouTube. Today over 1,000 media companies—including every major U.S. network broadcaster, movie studio, and record label—use the copyright protection tools that YouTube offers, and a majority of them choose to monetize rather than block their content online.

With the explosive growth of the Internet and skyrocketing demand for Internet-enabled devices, companies that rely on important limitations built into U.S. copyright law have risen quickly to become a central foundation of the American economy. Innovation-friendly limitations and exceptions, principally fair use and the safe harbors of the Digital Millennium Copyright Act (DMCA), work alongside copyright's exclusive rights to foster an unprecedented level of creativity and expression that fuels the economy. It is no exaggeration to note that the DMCA set the legal foundation for e-commerce. The Computer and Communications Industry Association has found that industries that rely on fair use and other limitations generate \$4.7 trillion in revenue, represent one sixth of total U.S. GDP, and support 17 million jobs. While online piracy remains a serious enforcement problem, we should not lose sight of the overall balance of our nation's copyright laws, which continues to spur a broad array of American-bred creativity and innovation.

How Google Protects Copyright

Google believes strongly in protecting copyright and other intellectual property rights. We understand that despite the overwhelmingly positive and legitimate uses of Internet services and technologies there will be some who misuse these for infringing purposes. Google invests millions of dollars in engineering and other resources to help rightsholders fight this misuse. Across our search engine and hosted products, we remove or disable access to millions of infringing materials each year at the request of copyright owners. We also voluntarily take several steps well beyond our legal obligations.

Google has been an industry-leader in developing innovative measures to protect copyright and help rightsholders control their content online. To date, Google has expended more than 50,000 engineering hours and more than \$30 million to develop Content ID, our cutting-edge copyright protection tool that is helping rightsholders make money on YouTube. This powerful technology scans every video uploaded to YouTube and, within seconds, compares it against more than 4 million references files provided by participating rightsholders. Copyright holders and their advocates—from the MPAA to NBC to Warner Music—have praised YouTube as a bright light in copyright protection.

We are also working on other major voluntary initiatives to help protect copyright. We committed last year to prevent terms that are closely associated with piracy from appearing in Autocomplete. Without altering search results, Autocomplete is a feature that algorithmically predicts and displays queries as users type based on what other users have typed. We have begun working to prevent several piracy-related terms from appearing in Autocomplete, and have asked content industry representatives to suggest other terms for consideration that won't overly restrict legitimate speech. We are also hard at work on a new initiative to make authorized preview music content appear more readily in search results.

With the flexibility to innovate on top of baseline legal regimes like the DMCA's notice and takedown process, Google is able to design these extra efforts in ways that help both rightsholders and users, encouraging more people to search, find, and enjoy the legitimate offerings available on the web.

Like all Internet companies, the critical foundation for our anti-piracy efforts remains the DMCA, the seminal law Congress passed in 1998 to address copyright protection online and promote the worldwide expansion of e-commerce. Congress rightly understood that some material posted by the millions of people who use online services infringes copyright, and that online service providers in the ordinary course of their operations engage in copying and other acts that expose them to potential copyright liability. Congress also recognized that requiring online providers to engage in pre-screening of every user-posted text, picture, and video would inhibit free expression and stifle the growth of the Internet.

Through the DMCA, Congress established a notice-and-takedown process that provides copyright owners expeditious recourse when they discover infringement online while also giving online service providers the certainty necessary to invest in Internet services and technologies. The careful balance struck by the DMCA created the legal infrastructure for the Internet we know today. The DMCA safe harbors make possible online platforms like eBay, Amazon, YouTube, Facebook, and Twitter, which in turn have unleashed new sources of creativity, economic development, and jobs.

The DMCA's shared responsibility approach works. Copyright holders identify infringement and, if they choose, request its removal. Upon notification, online service providers like Google remove or disable access

to the infringing material. This approach makes sense, as only copyright holders know what material they own, what they have licensed, and where they want their works to appear online. Service providers cannot by themselves determine whether a given use is infringing. A text, song, image, or video can infringe copyright in the context of one site but be legal on another, through license or in the context of criticism, political speech, or other legally protected use. Even copyright owners themselves sometimes have trouble determining whether a use of their content is infringing.

Copyright owners in 2010 called on Google to disable access to approximately 3 million allegedly infringing materials across all our products, which accounts for far less than 1% of all the materials hosted and indexed by Google. We received takedown notices by letter, fax, email, and web forms from all sorts of copyright owners including movie studios, record labels, adult entertainment vendors, and needlepoint pattern publishers, from 70 countries and in a wide variety of languages. We maintain a growing team of employees dedicated to receiving, reviewing, and responding to DMCA notices. We check to make sure that the notices are complete and are not attempts by competitors or others to use invalid copyright claims to censor speech with which they disagree.

Last December, I announced that we will invest even more resources to streamline the DMCA submission process. We are designing new tools that will enable us to act on reliable copyright takedown requests within 24 hours. That initiative is well underway, and we have already invested significant engineering resources. The new tool for Web Search is already being tested with a content industry partner, and the Blogger tool will begin testing next month. We are also in the process of improving our transparency efforts to notify site owners and our users when content has been removed as a result of allegations of infringement.

We also employ a wide array of procedures and expend considerable financial resources to prevent our advertising products from being used to monetize material that infringes copyright. For example, our AdSense program enables website publishers to display ads (identified by the “ads by Google” footer) alongside their content. Our policies prohibit the use of this program for infringing sites, and we use automated and manual review to weed out abuse. Last year, we took action on our own initiative against nearly 12,000 sites for violating this policy. We also respond swiftly when notified by rightsholders. We recently agreed to improve our AdSense anti-piracy review procedures and are working together with rightsholders on better ways to identify websites that violate our policies.

We are also helping to lead industry-wide solutions through our work with the Interactive Advertising Bureau (IAB), comprised of more than 460 leading media and technology companies. The IAB has established quality assurance guidelines through which participating advertising companies will take standardized steps to enhance buyer control over the placement and context of advertising and build brand safety. Last week, Google certified its compliance with these guidelines.

Despite the best efforts of the online advertising industry, proactive measures will never be a complete solution. Some publishers deliberately take steps to evade detection systems, meaning bad sites will invariably slip through. Technologically sophisticated players use tactics like “cloaking” (showing one version of their site to the public and a different version to Google) to evade the protections that Google and other companies put in place. Because of these tactics, coupled with the sheer volume of ads served per day, finding a particular ad on the web that has circumvented our systems may always be possible. While the industry is aggressively going after this abuse, it is clearly a cat-and-mouse game to stay technologically ahead of the bad actors, and Google is committed to being an industry leader in eradicating this behavior.

How Google Helps Combat Counterfeiting

Just as in the offline world, people misuse legitimate online services to try to market counterfeit goods. This abuse hurts our users and our business; combating it is central to Google's operations. The integrity and quality of the sponsored links displayed alongside Google search results are of paramount importance to our overall success. A Google user duped by a fake good is less likely to click on another Google ad in the future. For this reason, Google undertakes enormous efforts to root out ads for sites that sell counterfeit goods.

Google has clear policies against advertising counterfeit goods, and we expend considerable resources to enforce those policies. In the last six months of 2010, we shut down approximately 50,000 accounts for attempting to use sponsored links to advertise counterfeit goods, and more than 95% of these accounts were discovered through our own detection efforts. Even more ads themselves were blocked on suspicion of policy violations. Our automated tools analyze thousands of signals to help prevent bad ads from being shown in sponsored links. Last year alone we invested \$60 million in efforts to prevent violations of our ad policies.

But there is no silver bullet. It's a whack-a-mole problem, as we constantly work to improve our practices against sophisticated entities trying to game our protections. While Google's tools are quite effective, it is incredibly difficult for Google to identify a counterfeit product being advertised. This is a challenging task, even for brand owners. Online advertising companies, which do not take possession of the good, cannot know for sure whether any particular item out of millions advertised is indeed a counterfeit. As has always been the case with newspapers and offline advertising platforms, it is essentially impossible for Google to block all attempted abuse.

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

Similarly, we have clear policies against placing Google ads on third-party sites that sell or promote counterfeit goods. As a practical matter we receive very few complaints from brand owners about this problem. Still, to ensure that our practices continue to scale as the Web grows, we have recently committed to working more closely with brand owners to identify violators.

Google also regularly cooperates with a wide array of law enforcement authorities, including working with officials to combat counterfeiting. For instance, an enforcement manager at Rosetta Stone has thanked Google employees for providing him and the Secret Service with tremendous assistance that led to solving a \$100,000 fraud case. Google's Trust & Safety team also has trained thousands of law enforcement officials on evolving investigative techniques on the web and emerging trends that Google is seeing, all of which aid in law enforcement efforts.

The Complexities of Rogue Foreign Sites

Google understands the Subcommittee's desire to consider additional ways to combat rogue foreign websites that traffic in infringing goods yet are outside the reach of U.S. legal process. We urge the Subcommittee to seek input from a broad base of stakeholders and avoid approaches that threaten the growth of new technologies that benefit rightsholders and consumers in an increasingly social, mobile, and inter-connected world. We support increased international cooperation among governments to enforce the law, recognizing that unilateral domestic enforcement tactics are limited in their effectiveness and may risk retaliation against legitimate American businesses by other countries.

Policymakers should aim squarely at the "worst-of-the-worst" foreign websites without ensnaring legitimate technologies and businesses. Additional enforcement tools should target only those websites that are outside the reach of U.S. legal process and whose main purpose is commercial infringement. Where U.S. legal process is capable of reaching a particular website or a site consents to such jurisdiction, new causes of action are unnecessary and will lead to actions that overlap or are potentially inconsistent with existing law.

Defining what is a rogue site is not a simple task. Technology advances often lead to evolving areas of copyright law, as courts sort out the application of common law doctrines to new technologies. An overbroad definition of a rogue site could easily ensnare millions of popular U.S. websites that allow users to sell goods or upload content. Websites that responsibly respond to takedown notices and comply with the DMCA should not be deemed rogue. Procedural safeguards should ensure sufficient due process to avoid mistakes costing legitimate businesses the use of their domain name, which, for e-commerce companies, could very well mean their livelihood.

New legislation should not alter common law secondary liability principles or undermine the DMCA. Targeted legislation addressing rogue foreign websites must not inadvertently dismantle the legal framework upon which America's technology innovators rely. New legislation should not change common law principles of secondary liability or rewrite existing laws like the DMCA. For example, if *in rem* court orders are allowed against rogue foreign websites, the existence of such orders should not be used in civil cases to undermine DMCA safe harbors or increase the risk of secondary liability. Without expressly addressing this overlap, new approaches threaten to reach a much broader array of intermediaries than those directly served with a court order. The DMCA has a practical and real effect in thwarting infringement, and legislation that targets "the worst of the worst" should not increase liability for online services that are playing by the rules.

The DMCA strikes the right balance for search engines. By removing infringing material from domestic and foreign sources, the DMCA's notice-and-takedown process strikes the right balance among the interests of rightsholders, Internet users, and intermediaries like search engines, social networks and the vast other ways in which people find and link to information online. The DMCA has a proven 12-year track record as a fast, efficient tool for notifying online services that contain links that lead to infringing material, and it works. Through a process much simpler than obtaining an *in rem* court order, rightsholders send notices and search engines disable links to that infringing material. The DMCA already allows copyright owners to target every link to any infringing material online, and numerous entities assist them with that task.

Google users (including rightsholders searching for infringement) count on Google's Web Search to be as comprehensive as possible, serving as an index that accurately reflects the full range of what is lawfully

available on the World Wide Web. No search engine or other high-volume web platform is in a position to determine which uses are authorized, which are unobjectionable, or what qualifies as a fair use. Even copyright owners themselves find the task difficult. The good news is that a vibrant industry in online enforcement has sprung up, with companies making the process of locating infringing material faster and cheaper for rightsholders.

When it comes to offshore rogue sites, no one should think that imposing additional obligations on search engines, social networks, directories, or bloggers beyond the DMCA will be a panacea. If the site remains on the web, neither search engines nor social networks nor the numerous other intermediaries through which users post links can prevent Internet users from talking about, linking to, or referencing the existence of the site. These links or references will themselves appear in search results, and will enable users to reach the site. Simply put, search engines are not in a position to censor the entire Internet, deleting every mention of the existence of a site. If a rogue site remains accessible on the Internet, relying on search engines to try to make it “unfindable” is an impossible endeavor. Even if such a thing were possible for American search engines and other web services, it would simply spur the growth of offshore search engines like Baidu that do not comply with American law. We have always tried to provide users with a comprehensive picture of what is available on the Internet, which is a core principle that has led people around the world to trust the integrity of America’s search engines.

Legislation must not interfere with the health and stability of the Internet. Recent focus on using the domain name system (DNS) to police against undesired activity must be carefully weighed against its limited effectiveness and the significant implications for core American values such as innovation and freedom of expression. Even if service providers block domain names through DNS interference, the site will remain reachable through its IP address, browser plug-in software, alternative DNS providers, or other means. But the DNS blocking itself could affect the Internet’s reliability, security, and performance.

Policymakers should foreclose private rights of action and tailor intermediary requirements appropriately. Any obligations put upon payment providers or advertising services to address rogue foreign websites must be reasonable, technically feasible, and appropriately tailored. Given the evasive tactics bad actors employ to avoid detection, no intermediary will be able to prevent all abuse of its systems, and efforts to legislate must be careful not to hold intermediaries responsible for abuses of their systems that could not reasonably be prevented. Legislation should not include a private right of action that would invite suits by “trolls” to extort settlements from intermediaries or sites who are making good faith efforts to comply with the law.

Policymakers should dismantle barriers to licensing to encourage greater proliferation of compelling legal offerings for copyrighted works online. We encourage the Subcommittee to promote the creation of more innovative legitimate offerings in the marketplace that will harness the power of the Internet to compensate rightsholders. Numerous thorny issues still impede the efficient licensing of digital music—a thicket of licensing obstacles prevents consumers from buying lawful goods online and stops services from offering innovations that would benefit rightsholders and users alike. Yet, it is without question that attractive legal options for satisfying consumer demand in a timely, easy, and convenient way will reduce incentives to rely on illegal sources. Internet services are rapidly moving to cloud computing models, and policymakers should encourage content creators to embrace this technological trend at an early stage.

In the past several years, Congress has passed significant enforcement-related legislative measures while other bills aimed at fostering the growth of licensed services did not become law. Too often copyright initiatives impart ever-increasing penalties without clear evidence that such penalties put real money in artists' pockets. We urge the Subcommittee to turn its attention to market-creating measures that will encourage compelling legal offerings for users, make a proven difference in artist revenues, and incentivize the kind of innovation that is needed for our country's future. Licensing reform has the potential to do that.

Conclusion

Google agrees with the need to fight online infringement. There is of course no silver bullet, no one-size-fits-all umbrella solution. Rather, we urge the Subcommittee to carefully review and tailor measures to address rogue foreign websites without impairing legitimate technologies, innovative businesses, and lawful speech. At a time when the United States leads the global information economy, with Internet freedom a cornerstone of U.S. foreign policy, we must carefully consider how policies against foreign websites could set international precedents and undermine innovation, e-commerce, and freedom of expression the world over. Issues of jurisdiction and enforcement remedies for Internet-based activities affect matters well beyond intellectual property rights. We must work together to target the "worst-of-the-worst" rogue foreign websites without unintentionally impeding legitimate interests of those innovating and using online services to drive economic growth and global freedom.