



Center for Digital Democracy

September 25, 2008

The Honorable Herb Kohl
330 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Chairman Kohl:

The Center for Digital Democracy (CDD), a leading consumer and public interest group working to promote competition, content diversity, and privacy in the U.S. digital media marketplace, respectfully requests that you publicly call on the Department of Justice to either oppose—or ensure meaningful safeguards—for the pending Google and Yahoo online advertising alliance.

The formal joining together of the country's two leading competitors to deliver search advertising is a troubling development for advertisers, consumers, and citizens. Given the dominance Google already has in search advertising, permitting it to further expand its market share, and simultaneously operate a crucial part of its only significant competitor's online ad operations, raises very troubling consolidation and monopolistic issues. It is crucial that the U.S. do everything it can to promote competition in the key digital advertising market, especially given its emerging core role as the principal means supporting online editorial content. Unless action is taken—the deal opposed or, at the very least, meaningful conditions imposed, serious competitive harm will be inflicted on this vital sector of the U.S. economy. We hope you will urge the DoJ to not say “we surrender” to the idea that competition is necessary for the online advertising market.

While much of the attention to this pending merging of interests by Google and Yahoo has been on its impact on advertising prices, there are also key content diversity concerns. As we pointed out to the Department of Justice last July, both Yahoo and Google provide online search ads or related services for the majority of the country's newspapers. The pairing of Yahoo and Google in this proposed deal, we believe, will undermine competition and could ultimately reduce payments to newspaper publishers. Given the current financial pressure on newspapers, the joining together of the two key major competitors now providing much needed revenue for this editorial sector may further erode economic support for journalism. There are other concerns as well, fueled by the waves of recent consolidation that have already reshaped the U.S. online ad market. Both Google and Yahoo have acquired a number of major companies and key assets in this sector. As you know, Google now operates DoubleClick and Yahoo owns ad network Blue Lithium, for example. Both Google and Yahoo, through acquisitions, now operate major *competing* online ad exchanges [DoubleClick Advertising Exchange and Right Media]. A Yahoo dependent on its leading competitor for revenues will ultimately further reduce much-needed competition, harming small and large advertisers alike.

Finally, we urge you to again issue a call for regulators to address the privacy issues triggered by the Google/Yahoo proposed deal. It is troubling that the DoJ doesn't appear to be examining the privacy concerns intrinsic to the potential melding of online consumer information from leading competitors. Although CDD called upon the Federal Trade Commission to simultaneously investigate the data collection/privacy issues, it has failed to do so (based on our conversations with FTC officials). While DoJ may have "clearance" to examine the antitrust issues, the FTC is supposed to be the agency with jurisdiction over online consumer privacy protection concerns. Competition and data privacy in the online market are inextricably linked (its consumer data that's actually being acquired in these digital ad deals). U.S. consumers are not receiving the privacy safeguards necessary as major mergers or deals in this sector are being reviewed, including the current Google/Yahoo case.

The decisions we make now about the state of competition and consumer protection for the digital media system, especially interactive advertising, will have a profound impact on our society. We applaud the work you have done for so many years, including as chairman, that has helped protect both consumers and competitors. We hope you will again do so in the pending Google/Yahoo matter.

Respectfully,



Jeff Chester
Executive Director