

## Subject: Open Letter to Google's Julia Holtz from Foundem

CC'd to panellists and moderators at the IBA's 14<sup>th</sup> Annual Competition Conference

Dear Julia,

We thought that this would be a good time to clarify a few important details about Foundem's EU Complaint.

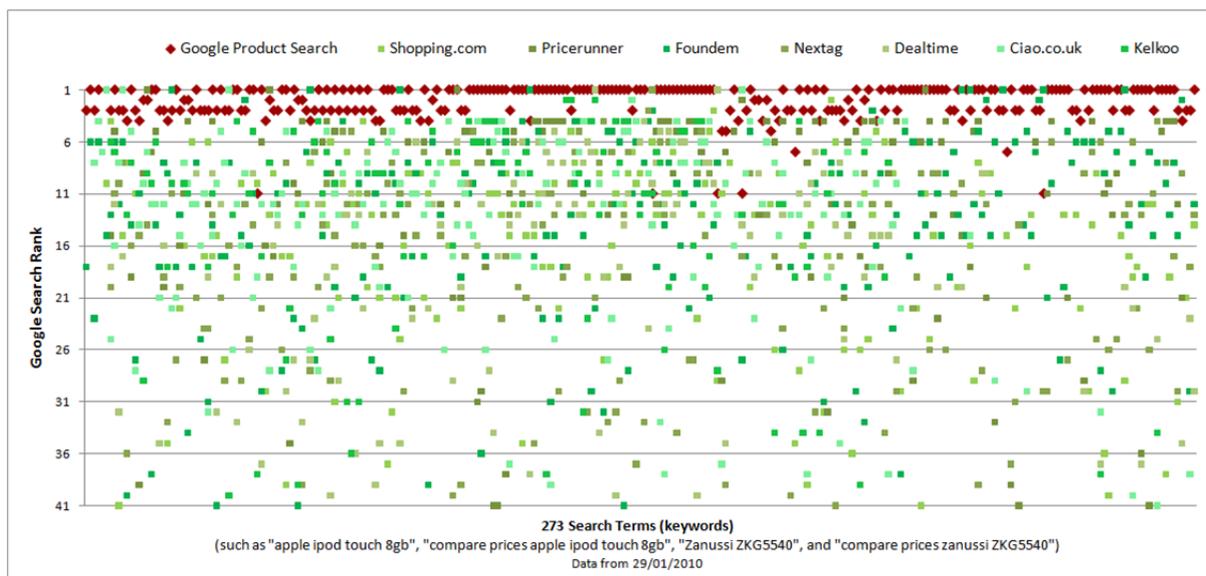
### Google's Universal Search

*"At the core of the Google value system, said engineer Matt Cutts, is the belief that the user experience matters most, and if the user experience is simple, and fast, and uncluttered with ads, and **if Google makes no attempt to steer users to its own sites, a bond of trust will form**" (From *Googled – The End of the World as We Know it* by Ken Auletta)*

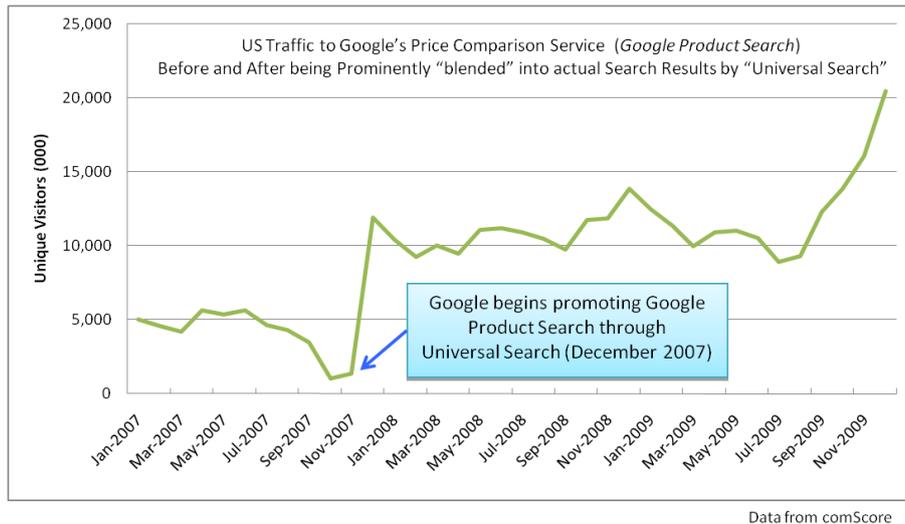
In May 2007, Google introduced what it calls "Universal Search"—a system for automatically inserting links to its own services in prominent positions within its natural search results. Crucially, the placement of Google's own services is subject to different algorithms and relevance criteria than those used to place everyone else's (i.e. those of actual Web results). This separation gives Google absolute discretion about how aggressively it favours its own services.

Foundem's complaint about Universal Search is that it has transformed Google's ostensibly neutral search results into an immensely powerful and anti-competitive marketing channel for Google's own services. Through Universal Search, Google can leverage its overwhelming dominance of horizontal search into virtually any adjacent market of its choosing.

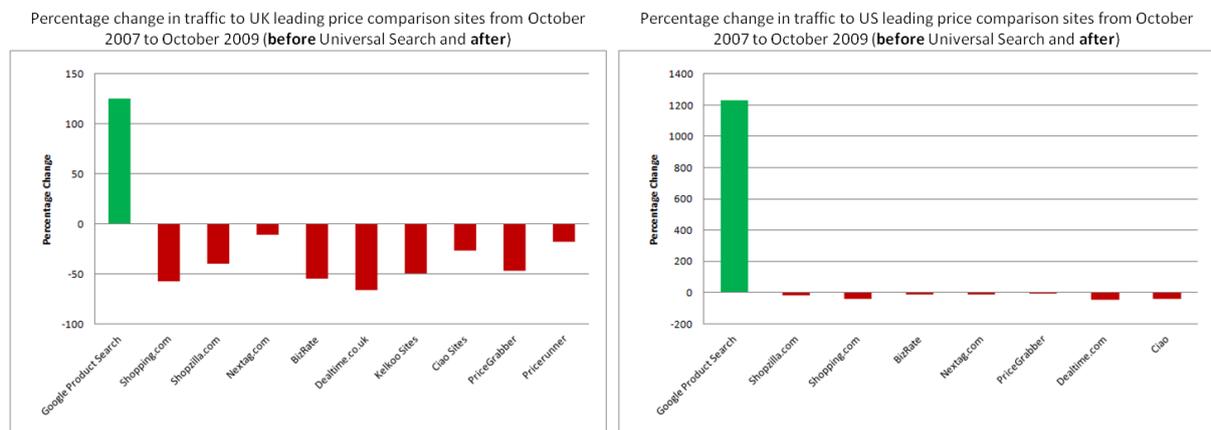
Foundem's [empirical analysis](#) of the extent to which Google is favouring its own price comparison service, for example, found that Google was very aggressively occupying the top slots for most product- and price-comparison-related search terms (the band of red along the top shows Google Product Search's rankings relative to its competitors in green):



Foundem's comScore data illustrates the dramatic effect that this preferential placement had on Google Product Search's traffic:



Our analysis also showed that this dramatic increase in traffic to Google's own price comparison service seemed to come at the expense of its competitors:



### Content Categories are Google's Own Services, not Partitioned Web Data

It is important to understand that when Google talks about inserting Universal Search results from "content categories" or "search indexes", it is talking about inserting links to Google's own category-specific, vertical services. When Google talks about the content categories of products, images, maps, and news, for example, it is talking specifically and exclusively about results from Google Product Search, Google Images, Google Maps, and Google News. The one minor exception to this is video content, which does very occasionally return videos from sources other than Google's own YouTube service.

It would be misleading to show someone a carefully selected example of a Google search (such as "lady gaga" on Google.fr) for which Google's Universal Search algorithms have inserted a video from a third party service, without pointing out that such examples are very rare for videos, and non-existent for most other categories of content. The same "lady gaga" query on Google.com and Google.co.uk, for example, returns only Google YouTube videos. Moreover, product-related Universal Search results exclusively feature Google's own price comparison service; news-related Universal Search results exclusively feature Google's own news aggregation service; geographic Universal Search results exclusively feature Google's own mapping service, and so on.

"lady gaga" on Google UK (14 Sep 2010)

lady gaga

About 226,000,000 results (0.14 seconds)

News for lady gaga

**Lady Gaga's raw meat dress: But is offal MTV outfit real or fake?** - 23 minutes ago  
By Rachel Quigley and Daily Mail Reporter But the question on everybody's lips after Lady Gaga's appearance in a 'raw meat' outfit at the MTV Video Music ...

**Meaty Lady talks a load of tripe** - The Sun - 52 related articles »

**Lady Gaga becomes a Reverend to many gay couples** - hestwired - 50 related articles »

**Lady Gaga - Official Site**  
The Official Web Site for Lady Gaga. Get the latest News, Photos, Video, Tour Dates and more.  
Events - Alejandro - Store - Telephone  
www.ladygaga.com/ - Cached - Similar

**Lady Gaga - News**  
13 Sep 2010 ... Lady Gaga and SLDN (Servicemembers Legal Defense Network) need your help to repeal 'Don't Ask Don't Tell', the policy of the United States ...  
www.ladygaga.com/news/ - Cached - Similar

★ Show more results from www.ladygaga.com

Videos for lady gaga

**Lady Gaga - Bad Romance**  
6 min - 23 Nov 2009  
Uploaded by LadyGagaVEVO  
youtube.com

**Lady Gaga - Alejandro**  
9 min - 8 Jun 2010  
Uploaded by LadyGagaVEVO  
youtube.com

**Lady Gaga - Wikipedia, the free encyclopedia**  
Stefani Joanne Angelina Germanotta (born March 28, 1986), known by her stage name Lady Gaga, is an American recording artist. She began performing in the ...  
Lady Gaga discography: The Fame Monster - The Monster Ball Tour  
en.wikipedia.org/wiki/Lady\_Gaga - Cached - Similar

Images for lady gaga - Report images

"lady gaga" on Google USA (14 Sep 2010)

lady gaga

About 240,000,000 results (0.19 seconds)

Instant is on ▼

Related searches: is lady gaga a man lady gaga vma 2010

News for lady gaga

**Lady Gaga's Statement-Making Speeches: A Timeline** - 46 minutes ago  
Eight-time VMA winner Gaga cries, shouts and stands up for causes whenever she hits the stage. By Mawuse Ziegbe (@mawuseziegbe)

**Lady Gaga's eight wins at ...**  
MTV.com - 3261 related articles »

**Was Lady Gaga's Meat Dress Really Riddled With Maggots?** - E! Online (blog) - 52 related articles »

**Lady Gaga To Launch Her Scent In 2012** - OnIndia - 32 related articles »

**Lady Gaga**

- Paparazzi (Dave Audé Remix) - Paparazzi ... - 2009 - 4:00
- Poker Face - The Fame Monster (Deluxe) - 2009 - 3:57
- Paparazzi - The Fame Monster (Deluxe) - 2009 - 3:28
- Just Dance - The Fame Monster (Deluxe) - 2009 - 4:02

Listen on: Rhapsody - Pandora

**Lady Gaga - Official Site**  
The Official Web Site for Lady Gaga. Get the latest News, Photos, Video, Tour Dates and more.  
Videos - Sweepstakes - Events - Photos  
www.ladygaga.com/ - Cached - Similar

**Lady Gaga - News**  
Sep 13, 2010 ... Lady Gaga and SLDN (Servicemembers Legal Defense Network) need your help to repeal 'Don't Ask Don't Tell', the policy of the United States ...  
www.ladygaga.com/news/ - Cached - Similar

Videos for lady gaga

**LADY GAGA - KANYE-SWIFT, BIEBER TAKE CENTER ...**  
2 min - 21 hours ago  
Uploaded by ArtisanNewsService  
youtube.com

**Lady Gaga - Bad Romance**  
5 min - Nov 23, 2009  
Uploaded by LadyGagaVEVO  
youtube.com

## All Internet Search Services Feature Organised Web Content

It would be misleading (and a red herring) to point out that all of the listings in Google's vertical search services are merely "organised" Web content rather than Google's own content. Organising other people's Web content is what all vertical search and comparison services do. The question is: should an overwhelmingly dominant search engine be allowed to systematically favour its own services that do this over everyone else's?

There is no small irony in Google highlighting that all of its own search services are primarily auto-generated links to the Web content of others, while simultaneously berating (and even penalising) other vertical search services for exactly the same "lack of original content".

## Search Neutrality

As one of network neutrality's most enthusiastic advocates, search neutrality poses an interesting dilemma for Google: how to argue that discriminatory market power is somehow dangerous in the hands of an Internet provider but harmless in the hands of an overwhelmingly dominant search engine? Because Google cannot argue against the actual principles of search neutrality—the same principles it has long advocated for networks—it seems to have contrived an imaginary and fundamentally distorted version to argue against instead.

Search neutrality is not a call for Government-mandated, "standardised algorithms", for example, nor is it a call for "unsorted and totally useless links". In October last year, Foundem defined [search neutrality](#) as the principle that search engine results should be comprehensive, impartial, and based solely on relevance. Clearly, no two search engines will produce the same search results; nor should they. But any genuine pursuit of the most relevant results must, by definition, preclude any form of arbitrary discrimination. Google's Universal Search and its increasingly heavy-handed penalty algorithms are both clear examples of arbitrary discrimination.

Foundem's EU Complaint proposes that a search engine should not be allowed to discriminate in favour of its own services; where it does insert its own services, these should be clearly differentiated from Web search results, just as sponsored links are. Foundem's Complaint also addresses Google's increasing use of arbitrary and discriminatory penalties, which, through error or design, can exclude legitimate sites from Google's search results, irrespective of their relevance. Foundem proposes that search engines should be transparent about the rationale behind these penalties and that affected sites should have access to a timely and transparent appeals process, so that penalties applied in error can be quickly rectified.

Notice that none of these proposals require Google to publish details of its algorithms, let alone seek permission for any changes from a government commission. In fact, Foundem's EU Complaint went out of its way to make clear that it is "not seeking to require Google to publish details of its ranking algorithms".

## **Misrepresenting Foundem and its Complaint**

Google's standard reply to the observation that it is dominant in search is to point out that its competition is "just a click away". While it is true that users have a choice of alternative search engines, it is equally true that web sites do not. Because nearly all users choose Google, there is no alternative search engine by which web sites can reach them. The unique role that Google plays in steering traffic and revenues through the global digital economy means that Google is not just a monopoly; it is probably the most powerful monopoly in history.

Unfortunately for Google, its "just-a-click-away" mantra does nothing to diminish its responsibilities as a monopoly. It merely underlines the unusual extent to which Google is dependent on preserving its benevolent public image.

## **Defamation by Proxy?**

Let's explore a hypothetical. If you know that Fred is an honest man, but you want people to think he is a liar, is it OK to quote someone else mistakenly calling him a liar? Or to urge people to read blog posts or comments that mistakenly call him a liar? It probably achieves the desired effect, but it's troubling, because you know that Fred is not a liar and that the people you are quoting are wrong.

In February, your blog post urged people to read what you called an "independent analysis of Foundem's ranking issues". As you know, for three and a half years Foundem laboured under an algorithmic Google search penalty, so extreme that none of its pages would appear in Google's search results for any queries, no matter how specific or relevant. As you also know, Google finally intervened to manually remove this penalty in December 2009. But the blog post you were urging people to read—being ignorant of Google's penalty policies and manual overrides—had drawn its own, entirely inaccurate, conclusions. Why urge people to read an analysis which you know to be fundamentally inaccurate in every material detail? And why did Google see fit to reference this thoroughly misleading blog post again in Google's recent announcement of the Texas AG's formal antitrust investigation?

As another example, James Grimmelmann (an Associate Professor at the New York Law School, not an "NYU professor" as Google originally stated in its Blog) posted a careless derogatory comment

about Foundem on a blog post by Frank Pasquale. From Grimmelmann's comments, it is clear that he is uninformed about Foundem, Foundem's Complaint, and Foundem's technology. Why then, would Google—who is not uninformed about any of these things—think Grimmelmann's baseless assertion that Foundem's service is “near-worthless” worthy of passing on to its many readers?

Do you think it likely that Grimmelmann would have made the same comments if, like Google, he knew about Foundem's innovative patented technology, which has allowed Foundem to provide market-leading vertical search services across a broad range of verticals with just a tiny fraction of the resources of any of its competitors?

What if, like Google, he knew that Foundem had been selected to power vertical search and content-integrated price comparison services for many of the UK's leading media companies?

What if, like Google, he knew that the UK's leading technology television programme had tested the UK's twelve leading price comparison services and unequivocally named Foundem the best?

What if, like Google, he knew that the UK's leading consumer organisation, *Which?*, had tested the UK's twelve leading flight search services and placed Foundem third; five places above Kayak, and six places above Kelkoo?

What if, like Google, he knew that the Sunday Times newspaper had named Foundem its website of the week and one of the UK's top travel sites?

And what if, like Google, he knew that Google itself had already reviewed Foundem's service and manually intervened to lift its three and a half year exclusionary Google search penalty?

We suggest that Grimmelmann, and the other equally misinformed commentators that Google has been quoting or urging people to read, would not have made the same inaccurate and/or defamatory statements had they been apprised of more of the facts.

### **Playing Dumb with Foundem's Site Search Box**

In the infinitely variable world of potential search terms, it is easy to find isolated examples that make one site seem superior to another. This is even easier if you contrive to overlook the fundamental differences between a site search box (which is merely an aid to site navigation) and a search engine's search box (which is the primary interface to its core search functionality).

Let's illustrate this with an example. It would be highly misleading to find an obscure product that Foundem doesn't cover, such as “dior couleurs iridescent” eye shadow, and then present a site-search for these keywords as a purported demonstration of a problem with Foundem's service. Foundem does not cover or claim to cover any cosmetics, so you would expect that this off-the-beaten-path query would not find any highly relevant results on Foundem. And indeed this is the case.

To save Google some trouble, a site search on Foundem for “knauf space combi-roll loft insulation” won't find any relevant results either. Nor will a search for “elephant foot umbrella stand” or indeed for any other product from an obscure category that Foundem does not cover or claim to cover.

While we're at it, we would be grateful if Google would stop portraying Foundem's Complaint or any of Foundem's other actions as in any way masterminded by Microsoft. The irony of this mischaracterisation is starting to grate.

Yours sincerely,

Shivaun and Adam Raff

Co-founders of [www.foundem.co.uk](http://www.foundem.co.uk) and [www.SearchNeutrality.org](http://www.SearchNeutrality.org) (a Foundem initiative)