

June 30, 2009

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Google AdWords, Google Ann Arbor  
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To: The Google AdWords Team and the Google Inc. Legal Department

**Re: Google AdWords Advertising Policy Update: Restricting Advertisements that Promote Abortion Services**

We are writing on behalf of Women on Waves (“WOW”), a non-profit organization providing health services and sexual education to prevent unwanted pregnancy and unsafe abortions, and the Health Equity and Law Clinic, Faculty of Law, University of Toronto, an academic clinic specializing in reproductive and sexual health law and policy. This letter concerns a change to Google Adwords policy respecting the advertising of abortion services.

On September 17, 2008, WOW received notice of a *Google AdWords Advertising Policy Update* (“Revised Policy”).<sup>1</sup> Under the *Revised Policy*, Google AdWords will:

no longer accept ads that promote abortion services and that target any of the following countries: Argentina, Brazil, France, Germany, Hong Kong, Indonesia, Italy, Malaysia, Mexico, Peru, Philippines, Poland, Singapore, Spain, or Taiwan. 'Abortion services' include, but are not limited to, abortion clinics and abortion counselors.

While we acknowledge much consideration was given to your decision on the advertising of abortion services and the potential effect of the *Revised Policy*, we request the policy be reviewed for the following reasons:

1. The effects of the *Revised Policy* for persons other than Adwords advertisers. We are concerned about the adverse effect of the *Revised Policy* for women seeking safe and lawful abortion services. By restricting access to information, the *Revised Policy* may contribute to unsafe abortion in a manner inconsistent with human rights principles.
2. The justification for the *Revised Policy*. We understand that Google may refuse or terminate any advertisement at any time and for any reason. Given the adverse impact of the *Revised Policy* on human rights to safe abortion, a reasoned justification in this instance is warranted but lacking.

We believe these reasons merit the rescission of the *Revised Policy*.

Google plays an important role in the protection of human rights. Through participation in the *Global Network Initiative* and other programs, Google has demonstrated its commitment to protect access to information as a human right consistent with internationally recognized laws and standards. These include the human rights outlined in the *International Covenant on Economic, Social and Cultural Rights*<sup>2</sup> among other international treaties.

Given the impact of the *Revised Policy* on human rights to safe abortion, we respectfully request the policy be reviewed and rescinded. If following your review, Google decides there are reasons to maintain the *Revised Policy* we request these reasons be publicly disclosed. Justification for the *Revised Policy* avoids an adverse inference that Google is acting without concern for the human rights impact of its policies.

### **1. The Adverse Impact of the *Revised Policy* on Human Rights to Safe Abortion**

We are concerned about the adverse effect of the *Revised Policy* for women seeking safe and lawful abortion services. By restricting access to information, the *Revised Policy* may contribute to unsafe abortion in a manner inconsistent with internationally recognized human rights.

Unsafe abortion is a major cause of maternal mortality and morbidity worldwide. Every year an estimated seventy thousand women die and millions more suffer with complications from unsafe abortion.<sup>3</sup> In developing countries, an estimated five million women are admitted to hospital for treatment of complications from unsafe abortion each year.<sup>4</sup>

Many women who resort to unsafe abortion live in countries where abortion is lawful under certain conditions, such as where necessary to save the life of the pregnant woman or to protect her physical and mental health. Women resort to unsafe abortion because they cannot access safe services to which they are lawfully entitled within the health system.<sup>5</sup> Unsafe abortion is a consequence of access barriers to safe and lawful services.

Access to health services without discrimination is an essential component of the rights to health and equality under international law.<sup>6</sup> Women's right to health includes an entitlement to access services specific to their health needs. It is discriminatory under international law to restrict the promotion or provision of appropriate health services for women, including those related to reproductive health, and to obstruct action taken by women in pursuit of their health goals.<sup>7</sup> Given the *Revised Policy* restricts advertising on abortion services, sex-specific health care, its adverse impact is borne exclusively by women thereby raising equality concerns.

Access to information – the right to seek, receive and impart information on health issues – is a key determinant of access to health care.<sup>8</sup> This is especially true respecting access to abortion services. Many women seek unsafe abortion because they lack access to information on the legal status of abortion and the availability of services.

Women and health providers in many countries are uninformed about the legal status of abortion, the conditions under which it is lawful.<sup>9</sup> Many wrongly believe that abortion is prohibited by criminal law in all circumstances. Despite satisfying the conditions for lawful abortion, women are unfairly denied services and/or seek unsafe services in clandestine settings.<sup>10</sup>

The stigmatization of abortion, attributable in part to its criminal regulation, also deters women from inquiring about the availability of services. Women may be reluctant to request services for fear of health provider judgment or refusal, and public disclosure and retribution from families and communities. Many women for this reason do not consult their regular health providers and seek care outside their communities. They are without traditional sources of health information. Recognizing the vulnerability of women seeking inter-jurisdictional access to abortion services, the European Court of Human Rights has emphasized the right to impart and receive information on abortion services as essential to ensuring women's health and well-being.<sup>11</sup>

Advertisements on abortion services can be a valuable source of information on both the legal status of abortion and the availability of services, and thus a crucial measure to mitigate access barriers to safe and lawful abortion. International law recognizes advertisements as a protected media for the exchange of information.<sup>12</sup>

The United States Supreme Court, in holding a law that restricted advertisements promoting abortion services as unconstitutional, recognized that such advertisements contained factual material of public interest.<sup>13</sup>

The advertisements informed readers of available services, especially valuable information in the abortion context. In countries where the public health sector has not ensured the availability of abortion services in its facilities, the private and often non-profit sector has proven a necessary alternative for the provision of safe and lawful services.<sup>14</sup> Advertisement is a crucial means by which the private sector informs women of available services and facilitates access.

The advertisements also conveyed information about the subject matter of abortion, including its legal status. The mere existence of the services, the possibility that the advertiser was typical of other organizations and the availability of the services, was important factual information. Recent reform in the United Kingdom on television advertisement of abortion services was similarly motivated by the public health need for access to full and complete information on abortion services.<sup>15</sup>

The internet is a primary health information source. It is of particular importance to individuals who lack access to traditional sources of health information, require confidential and timely access to information and seek services outside of their communities. Online advertisements that promote abortion services can improve access to information on the legal status of abortion and the availability of lawful services, and can thereby reduce recourse to unsafe abortion.

Vehicles such as a *Google Adwords* moreover increase the credibility of information sources, defined in terms of their expertise and trustworthiness. The service facilitates access to relevant information by isolating the advertisement and the availability of services from a string of search engine results, which in the case of a political and social issue such as abortion may be overwhelming for an individual woman seeking services.<sup>16</sup>

By restricting access to information on safe and lawful abortion, the *Revised Policy* may thus contribute to unsafe abortion in a manner inconsistent with human rights under international law.

## 2. Justification for the Revised Policy and its Adverse Human Rights Impact

Given the human rights impact of the *Revised Policy*, we believe that a reasoned justification for the policy is warranted. Google's decision on the advertising of abortion services may have been informed by the following considerations:

- A. the criminal regulation of abortion,
- B. abortion as a high-risk health service,
- C. legal restrictions on the advertisement or promotion of abortion services, and
- D. government or other political pressure.

Careful analysis demonstrates these considerations cannot justify the *Revised Policy* and its adverse human rights impact.

### A. The Criminal Regulation of Abortion

The *Revised Policy* may have been informed by the criminal regulation of abortion in the target countries, and the concern that acceptance of advertisements promoting abortion services may be construed as promotion or the aiding and abetting of criminal activity.

Rather than illicit activity, counseling and information about abortion services, even where criminally restricted, is regarded as an important component of harm reduction and safe abortion initiatives. The Ministry of Health in Uruguay, for example, has enacted guidelines that allow health providers to provide information and counseling about abortion to women ineligible to receive lawful services.<sup>17</sup>

More importantly, in all target countries of the *Revised Policy* abortion services are lawful under certain conditions.<sup>18</sup> A blanket restriction on advertisements that promote abortion services for reason of their criminal status is therefore unjustified. Women are entitled by law to access abortion services albeit under a set of regulated conditions. The target countries in this respect cannot be distinguished from the many countries, such as the United Kingdom, to which the *Revised Policy* does not extend. Most countries have criminal law provisions respecting abortion, but these provisions are supplemented by public health statutes, judicial rulings, and other laws and regulations that address the provision of abortion as a lawful and legitimate health service.<sup>19</sup> This is true in all of the target countries.

### B. Abortion as a High-Risk Health Service

The *Revised Policy* may have been informed by evidence of maternal mortality and morbidity related to unsafe abortion, and thus concern about advertisements that promote a high-risk health service. It is crucial, however, to distinguish between unsafe and safe abortion.

Unsafe abortion is defined as a procedure to terminate pregnancy undertaken by individuals without the necessary skills or in an environment that does not conform to minimum medical standards, or both.<sup>20</sup> When appropriately regulated and provided by skilled persons under conditions that meet medical standards, abortion is one of the safest procedures in medical practice.<sup>21</sup>

The *Revised Policy* may have been directed to particular concerns about online abortion services, the sale of abortifacients or medicines for use in pregnancy termination. As a non-invasive alternative to surgical abortion, medication abortion is widely regarded as having significantly improved access to safe abortion. It is safe and effective, with few serious complications and success rates of 95–98%.<sup>22</sup>

Medication abortion, moreover, is an especially important innovation for safe abortion because it may be delivered by a more diverse set of providers in a range of health settings. Research demonstrates that outcomes of services provided through telemedicine (provision of medicines, counseling and information through the internet) are comparable with results reported in studies on medication abortion in outpatient settings.<sup>23</sup>

A restriction on advertisements that promote abortion services for reason of safety is therefore unjustified. The *Revised Policy* is over-inclusive insofar as it restricts access to information on safe health services. It is also under-inclusive. Safety concerns about the online sale of medicines is not limited to abortion services, but of equal relevance to all health services. Ensuring the safe provision and use of online health services is a legitimate concern, and we encourage Google to develop a tailored policy directed to this objective.

#### C. Legal Restrictions on the Advertisement or Promotion of Abortion Services

The *Revised Policy* may have been implemented because of domestic laws or policies respecting the advertisement of abortion services in the target countries. Some (e.g. Brazil and France) but not all target countries have laws specific to the advertisement of abortion services. No target country, however, absolutely prohibits the advertisement of abortion services. Advertisements are permissible in Brazil, for example, where the conditions under which abortion is lawful are appropriately indicated.<sup>24</sup> This policy recognizes that under certain conditions abortion services are lawful and should be treated without distinction from other health services.

Rather than an absolute prohibition against advertisements that promote abortion services, the *Revised Policy* should reflect a similar flexible standard. The *Revised Policy* in this respect is inconsistent with Google Adwords' general policy on advertisements subject to legal regulation, which states that it is the responsibility of the advertiser to ensure that its advertisements are in full compliance with the applicable domestic law.<sup>25</sup> There is no clear reason why the same approach cannot be applied to abortion service advertisements, which may be subject to different legal regulation across jurisdictions.

#### D. Government or other Political Pressure

The *Revised Policy* may have been informed by government policies that abortion, even when lawful, should not be promoted as a health service. Such policies are often based on the mistaken assumption that greater access to information and services will increase abortion rates. Increased access to safe and lawful abortion does not increase the number of abortions nor lead women to use abortion as an alternative to contraception for family planning. Rather it ensures that a greater number of abortions are safe abortions.<sup>26</sup>

Such policies are more importantly inconsistent with human rights principles. Individuals should not be denied access to information as a measure to change health-seeking behaviour. Women are entitled as of right to information about all safe and lawful health services, including those related to reproductive and sexual health. We believe that Google shares this conception of access to information as a fundamental human right.

The lack of reasoned justification for the *Revised Policy* given its impact on human rights to safe abortion merits its rescission. We respectfully request in light of Google's demonstrated commitment to protect access to information as a human right that the *Revised Policy* be reviewed and rescinded. If Google decides there are reasons not addressed in this letter to maintain the *Revised Policy*, we would appreciate your sharing these reasons with us.

We look forward to your response and appreciate your time and consideration.

Sincerely,

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## References

- <sup>1</sup> Email Communication from The Google AdWords Team to Women on Waves (September 17, 2008) (on file).
- <sup>2</sup> *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, 993 U.N.T.S. 3, (entered into force Jan. 3, 1976).
- <sup>3</sup> World Health Organization (WHO). Unsafe abortion: global and regional estimates of the incidence of unsafe abortion and associated mortality in 2003. 5 (Geneva: WHO, 2007); David A. Grimes et al. “Unsafe abortion: the preventable pandemic” (2006) 368 *Lancet* 1908-19, 1910.
- <sup>4</sup> Susheela Singh. “Hospital admissions resulting from unsafe abortion: estimates from 13 developing countries” (2006) 368 *Lancet* 1887-92, 1890.
- <sup>5</sup> WHO. *Safe Abortion: Technical and Policy Guidance for Health Systems*. 82 (Geneva: WHO, 2003). See Concluding Observations of U.N. bodies that monitor compliance with international human rights conventions, e.g. *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Colombia*, CEDAW, UN Doc. CEDAW/C/COL/CO/6 (2007): While noting the decriminalization of abortion under certain conditions, the Committee remained “concerned that, in practice, women may not have access to legal abortion services” (para. 22); *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Saint Lucia*, CEDAW, UN GAOR, 61st sess., supp. no. 38 (A/61/38) part II (2006) 114: While welcoming legal reform that permits abortion under certain circumstances, “[t]he Committee notes with concern the persistence of unsafe abortions in the country. It also notes with concern that no information was provided about measures to provide safe abortion services where those are permitted by law” (paras. 154, 181).
- <sup>6</sup> U.N. Comm. on Econ., Soc. and Cultural Rights, *General Comment No. 14. The Right to the Highest Attainable Standard of Health*, UN doc E/C.12/2000/4 at para. 12 (Aug. 11, 2000).
- <sup>7</sup> U.N. Comm. on the Elimination of all Forms of Discrimination against Women, *General Recommendation No. 24: Women and Health*, UN Doc. A/54/38/Rev.1 at paras. 11, 14, 23 (1999)
- <sup>8</sup> *Supra* note 6.
- <sup>9</sup> See e.g. Chelsea Morroni, Landon Myer & Kemilembe Tibazarwa. “Knowledge of the abortion legislation among South African women: a cross-sectional study” (2006) 3 *Reproductive Health* 7; Lisa A. Goldman, Sandra G. García, Juan Díaz & Eileen A Yam, “Brazilian obstetrician-gynecologists and abortion: a survey of knowledge, opinions and practices” (2005) 2 *Reproductive Health* 10; Davida Becker, Sandra G. Garcia & Ulla Larsen “Knowledge and Opinions about Abortion Law among Mexican Youth” (2002) 28(4) *International Family Planning Perspectives* 205-213; Kirti Iyengar & Sharad Iyengar. “Elective abortion as a primary health service in rural India: experience with manual vacuum aspiration.” (2002) 10(19) *Reproductive Health Matters* 54-63.
- <sup>10</sup> See *Concluding Observations of the Human Rights Committee: Argentina*, HRC, UN Doc. CCPR/CO/70/ARG (2000): “[T]he Committee is concerned that the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law” (para. 14); Grimes, *supra* note 3 at 1913.
- <sup>11</sup> *Open Door Counselling and Dublin Well Woman v. Ireland* [1992] 15 EHRR 244.
- <sup>12</sup> *International Covenant on Civil and Political Rights*, 16 December 1966, GA Res. 2200A (XXI), art. 19.
- <sup>13</sup> *Bigelow v. Virginia*, 421 U.S. 809 (1975).
- <sup>14</sup> Marge Berer. “National Laws and Unsafe Abortion: The Parameters of Change” (2004) 12 (24 Supp) *Reproductive Health Matters* 1–8, 5.
- <sup>15</sup> U.K., Broadcast Committee of Advertising Practice (BCAP) and the Advertising Standards Authority (ASA), *The BCAP Code Review: Consultation on the Proposed BCAP Advertising Standards Code* (2009).
- <sup>16</sup> See Mike Benigeri & Pierre Pluye, “Shortcomings of health information on the Internet” (2003) 18 *Health Promotion International* 381. Article analyzes the rising number of Internet sites providing medical information and services and the lack of available assistance in sorting through this information. See also: Berland et al., “Health Information on the Internet: Accessibility, Quality and Readability in English and Spanish” (2001) 285 *JAMA* 2612.
- <sup>17</sup> Uruguay, Ministry of Public Health, *Order/Ordenanza* 369/04, 6 de agosto del año 2004.
- <sup>18</sup> United Nations, Department of Economic and Social Affairs, Population Division. *World Abortion Policies 2007*. (New York, United Nations, Department of Economic and Social Affairs, Population Division, 2007).
- <sup>19</sup> Reed Boland and Laura Katzive. “Developments in Laws on Induced Abortion: 1998–2007” (2008) 34(3) *International Family Planning Perspectives* 110–120, 110.
- <sup>20</sup> WHO. *The prevention and management of unsafe abortion. Report of a Technical Working Group*. 3 (Geneva: WHO, 1993).
- <sup>21</sup> WHO, *supra* note 3 at 5; Grimes, *supra* note 3 at 1908.
- <sup>22</sup> Christian Fiala & Kristina-Gemzell Danielsson. “Review of medical abortion using mifepristone in combination with a prostaglandin analogue” (2006) 74 *Contraception* 66–86.
- <sup>23</sup> R.J. Gomperts et al. “Using telemedicine for termination of pregnancy with mifepristone and misoprostol in settings where there is no access to safe services” (2008) 115 *BJOG: An International Journal of Obstetrics and Gynaecology* 1171-5.
- <sup>24</sup> Sandra Coliver. “Article 19 International Centre Against Censorship” in *The Right to Know: Human Rights and Access to Reproductive Health Information* (University of Pennsylvania Press, 1995).
- <sup>25</sup> Google AdWords, “Advertising Policies” (2009).
- <sup>26</sup> Grimes, *supra* note 3 at 1913; See also: G. Sedgh et al. “Induced abortion: estimated rates and trends worldwide” (2007) 370 *The Lancet* 1338-1345.

**The undersigned individuals and organizations support this letter and request the Revised Policy be reviewed and rescinded.**

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ICMA (International Consortium for Medical Abortion)

LACAI, The Latin America Consortium Against Unsafe Abortion

Latin American and Caribbean Women's Health Network (LACWHN)