

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Agence France Presse,
1015 15th St NW,
Washington, DC 20005)
Plaintiff,)
v.)
Google Inc.,)
a California Corporation,)
1600 Amphitheatre Pkwy,)
Mountain View, CA 94043)
Defendant.)
CIVIL ACTION NO.: 1:05CV00546 (GK)
**AGENCE FRANCE PRESSE'S MOTION
TO DISMISS**

Plaintiff Agence France Presse (“AFP”), by and through its undersigned attorneys, hereby moves the Court, under Rule 12(c) of the Fed. R. Civ. P., to dismiss the Tenth Affirmative Defense and First and Third Counterclaims filed by Defendant Google Inc. (“Google”) on the following grounds:

1) Section 512 of the Copyright Act does not immunize Google from monetary damages for the infringement of AFP's copyright protected material because Google's action do not fall under the language of the statute. Specifically, section 512 protects service providers that link – through the service provider's information location tools – to infringing content on the web sites of third parties. This defense must fail because Google is not linking to infringing material. On the contrary, Google is directly infringing AFP's material by siphoning it off AFP subscribers' web sites and reproducing and displaying the material on Google News without authorization.

2) Google's First Counterclaim seeks a declaration by the Court that AFP's headlines and story leads are not subject to copyright protection as a matter of law. However, this claim must fail because nothing in the law supports such a position. Headlines and story leads, which are the most creative and important part of a news story, are not precluded from copyright protection by statute, regulation or case law.

3) Google's Third Counterclaim seeks a declaration that because AFP and its licensees did not secure AFP's copyright protected material from Google's web crawlers then AFP has effectively lost its statutorily mandated protection and assented to Google's use of the material. This counterclaim must fail because it essentially asks the Court to impose a new set of requirements on copyright owners that alter and limit their fundamental rights under copyright law, specifically that in order to maintain their copyright on material posted on the internet that they must install electronic protective shields around their content or forfeit their rights.

For the foregoing reasons and the reasons presented in AFP's Memorandum of Points and Authorities in Support of this motion, the Court should dismiss Google's Tenth Affirmative Defense and First and Third Counterclaims.

Respectfully submitted,

Dated: June 8, 2005

By: _____/s/
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