

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

Agence France Presse,)
Plaintiff,)
v.)
Google Inc.,) CIVIL ACTION NO.: 1:05CV00546 (GK)
Defendant.)
Initial Scheduling Conference:
June 20, 2005
1:45 PM
Courtroom 19
)
)

PLAINTIFFS STATEMENT OF THE CASE

Pursuant to this Court's May 25, 2005 Order Setting Initial Scheduling Conference, Plaintiff Agence France Presse ("AFP"), hereby submits its statement of the case, including the jurisdiction basis for its claims against Defendant Google Inc. ("Google").

1. Jurisdictional basis for claim:

Plaintiff's underlying claim is for copyright infringement. Pursuant to 28 U.S. C. §1331 and §1338, original jurisdiction over claims of copyright infringement vests exclusively with the United States District Courts. AFP holds certificates of copyright registrations for the works in question, which were duly issued by the United States Copyright Office. Plaintiff's Complaint also includes a state unfair competition claim for

which this Court has pendant jurisdiction. In addition, there is complete diversity of citizenship between the parties and the dispute exceeds \$75,000 in value.

2. Nature of the case:

AFP is one of the world's foremost and largest wire services. AFP supplies news stories (in multiple languages), headlines (in multiple languages), photographs and graphics to newspapers, wire services, magazines, web sites, news aggregators, governments and corporations around the world. The news is provided on a real time basis from AFP bureaus around the world.

Google is a company that offers an Internet search engine, which members of the public use to search for information. Google also owns and runs a business called "Google News." Google News is a news aggregator, not a search engine. Google simply copies news stories with their headlines and photographs from newspapers and other sources around the world and replicates this material on Google News. Google has taken headlines, story leads and photographs from news stories belonging to AFP and other companies. The AFP material Google copied is protected under copyright. Google replicates AFP material on Google News without AFP's permission or any form of license. The manner and fashion of display on Google News is such that the vast majority of readers need not go any further than Google News to learn about a news story or view the news photograph depicting the news event.

AFP licenses other news aggregators for the same type of usage which Google simply usurps. AFP believes that Google's unauthorized use and reproduction of its headlines, story leads and photographs infringes AFP's copyrights in those works. Google's use is not a "fair use" as articulated by the Copyright Act or the relevant case

law. To the contrary, Google's use is a commercial non-transformative usage of creative works in which the whole of the work or the most important part of the work is copied in a manner that seriously effects the value of the underlying material.

Further, when Google captures and reproduces AFP's copyrighted material for Google News, it deliberately removes AFP's "Copyright Management Information" (*inter alia* the name of, or other identifying information about the author and/or copyright owner of a work), which a violation of Section 1202(c) of the Copyright Act.

Finally, AFP believes that Google's unauthorized use of AFP materials violates AFP's common law right against the misappropriation of its "Hot News." Specifically AFP collects news from around the globe at great expense and with great effort. The collected news is licensed to outlets around the world evidencing its economic worth. The value of AFP's materials is also affected by the fact that the stories are time sensitive, breaking news. In today's Internet dominated world, breaking news needs to be delivered almost instantaneously or it loses most of its value. Google's use of AFP news is a blatant exercise in "free riding." Google expects AFP to go to the expense of setting up bureaus around the world, hiring thousands of people to develop and write news stories, and establishing an extensive infrastructure for distribution of those news stories and then simply accept that Google will send out its "Internet spiders" and appropriate AFP's news for its own benefit. Google News is a news aggregator in direct completion with AFP and its clients. If anyone who wanted to present the news was simply allowed to wait for AFP to gather the news and then aggregate it, as Google News does, the economic incentive for AFP (or any other wire service) to gather the news would be destroyed.

Google presented numerous affirmative defenses and a counterclaim seeking a declaratory judgment of noninfringement. As AFP understands Google's affirmative defenses and counterclaim,

- (1) Google believes that its use of AFP materials is a fair use,
- (2) Google believes that no news headline and story lead can ever be protected by copyright,
- (3) Google believes that it has the right to remove AFP's "Copyright Management Information,"
- (4) Google believes that unless a copyright owner affirmatively sets up electronic barriers around its copyright protected materials it is granting anyone and everyone a license to reproduce its copyrighted materials, and
- (5) Google believes that its unilateral action in taking AFP materials does not constitute a misappropriation of AFP's "Hot News."

AFP answered Google's counterclaim and filed a Motion to Dismiss certain of the affirmative defenses and counterclaims.

Respectfully submitted,

Dated: June 15, 2005

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