

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

AGENCE FRANCE PRESSE, :  
Plaintiff and Counter Defendant :  
: v. : Civil Action No. 1:05CV00546 (GK)  
: Next Due Date: Proponent's Rule  
: 26(a)(2) Statements due July 31,  
: 2006  
GOOGLE, INC., :  
Defendant and Counter Claimant :  
:

**STIPULATION FOR EXTENSION OF DATES SET IN COURT'S  
JANUARY 24, 2006 STIPULATED ORDER**

1. The parties filed a Stipulation Regarding Determining Liability for Injunctive Copyright Relief with the Court which was signed by the Court on January 24, 2006.

2. The parties had, in an attempt to narrow the materials which were subject to discovery in this cause of action, agreed on a sampling plan that they would use in order to determine liability on the various issues before the Court (damages were excluded from the Stipulation).

3. The Stipulation provided that:

- a. a sample of random dates from the periods at issue would be agreed to by Google and AFP;
- b. Google would then provide screen shoots from those dates; and
- c. AFP would then research those dates, identify the AFP works which appeared on Google News on those dates and the parties would proceed with discovery regarding those items.

4. The Stipulation was based on the parties' best estimates of the capabilities of the parties and the existing archives and materials.

5. To the parties' mutual surprise it turned out that as to the later periods selected, Google did not keep an archive as it had switched its model of operation to a dynamic mode and, as such, the website constantly changed and it did not keep copies of its pages. Therefore, the later dates stipulated by the parties turned out not to be available from which to harvest samples.

6. The parties then, in an attempt to keep the stipulated process on track, agreed to additional dates in the earlier period.

7. Google needed additional time to provide its information to AFP and AFP acquiesced to its request for additional time. However, after further review by Google of the older materials, they found that the photos which had originally appeared on the pages no longer appeared in the pages as they were archived and provided to AFP. Only through a multi-step process of AFP searching background code could this devise a link to the photos, thus adding many additional steps and time to the process in order for AFP to identify the photos which had appeared on Google News.

8. AFP, even after completing this multi-step process to identify the pictures, found that the vast majority of the links led to dead ends. This also appeared to be the case with many of the headlines and story leads as well as when the links were followed back two or three years, most of them were no longer archived by the underlying publications.

9. As a result, the sampling that the parties had anticipated being available for them to use have not materialize.

10. The parties are currently in discussions in an attempt to formulate a different model with the same end result in mind, specifically, having a sampling from which to litigate the liability issues.

11. As of this date, the parties have not yet been able to work out an acceptable substitute sampling program.

12. In the Court's order, it provided that on or by June 7, 2006, AFP was to make a request to the Court for additional sample dates or home pages if the initial estimates had not been reached.

13. Therefore, the parties are jointly requesting that the Court allow another thirty (30) days for the parties to devise a new sampling system and for AFP to ascertain whether or not it works and, further, to have a status conference set in approximately mid-July 2006, based on the Court's availability, in which to present the new model and findings to the Court or if the parties are unable to agree on a new sampling method to make their separate proposals to the Court on how to proceed.<sup>1</sup>

Respectfully submitted,

/s/ \_\_\_\_\_  
Joshua J. Kaufman  
VENABLE LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
(202) 344-8538 (telephone)  
(202) 344-8300 (facsimile)  
jjkaufman@venable.com (email)

Date: June 7, 2006  
So Ordered:

Gladys Kessler USDC Judge

---

<sup>1</sup> Counsel for AFP will be out of the country from June 9 through June 20, 2006 and back in on June 26, 2006.