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Thomas W. Kirby
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Joshua J. Kaufman
Venable LLP
575 7th St. N.W.
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Re: AFP v. Google – The “Samples” Issue – VIA EMAIL

Dear Joshua:

We have had further internal discussions concerning the “samples” issues raised in your firm’s recent filing and our firm’s response.

1. As to headlines and leads, the Stipulation worked. The Google News pages we produced displayed the headlines and leads as anticipated. Although Google News pages were not available for some initially chosen dates, AFP and Google agreed on substitute dates. Under the Stipulation, those dates are to be used unless AFP cannot find at least 25 articles from its data bases whose headlines, leads, or both appeared on the Google News front pages. You have not reported that to be the case. We agreed to an extension of your deadline for identifying and producing the AFP articles, but ask for compliance by early next week.

2. The material Google was able to produce on thumbnails, which contained links to original sources rather than images, did not match our mutual expectations. We accept that AFP encountered difficulty identifying original photos. We remain open to reasonable solutions, bearing in mind it is AFP’s fundamental obligation to identify allegedly infringed works. However, AFP maintains a complaint asserting infringement of “thousands” of images, and Google must have grave reservations about a “sample” selected unilaterally by AFP. Meaningful discussion of how images collected by AFP might be used must be preceded by disclosure of (1) who made the copies, (2) at what intervals over how many days, (3) for what purposes, (4) using what criteria, (5) to which data base images each thumbnail corresponds, (6) how that was determined, (7) what happened when no AFP image was found, and (8) how often that occurred. Obviously, time is growing short.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'TKirby', written over a horizontal line.

Thomas W. Kirby