

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AGENCE FRANCE PRESSE)
vs.)
Plaintiff)
vs.) CIVIL ACTION NO.: 1:05CV00546 (GK)
GOOGLE INC.,)
Defendant.)
_____)

EXPERT REPORT OF DR. JOHN R. LEVINE

Submitted by:

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Attorneys for Google Inc.

I, Dr. John R. Levine, provide the following expert disclosures in connection with the above-referenced matter.

I. Background And Experience

1. I currently am an independent computer industry consultant and author specializing in the Internet and Internet-related issues. I lecture to and consult for numerous clients including IBM Canada, CBS Television, Minnesota Power, the American Institute of Chemical Engineers, Alex, Brown & Sons, AT&T Easylink and Hewlett-Packard.
2. I am a member of the At-Large Advisory Committee for the Internet Corporation for Assigned Names and Numbers (ICANN). I am the chair of the Internet Research Task Force (IRTF) Anti-Spam Research Group. Since 1997, I have been a board member of the Coalition Against Unsolicited Commercial Email, an Internet user advocacy group, and I currently run the Network Abuse Clearinghouse, a free service that helps Internet users report and deal with abusive online behavior.
3. I have been a network manager for a private network that hosts over 300 Internet domains and websites, totaling over 300,000 web pages, since 1995.
4. I have been the Mayor of the Village of Trumansburg, New York since 2004.
5. I have authored or co-authored over a dozen books on computer issues including: The Internet for Dummies (now in its 10th edition, with over eight million copies in print), Internet Privacy for Dummies (2002), Graphics File Formats (2nd Ed 1995), Programming for Graphics Files in C and C++ (1994), and Internet Secrets (2d Ed. 2000).

6. I have been active in the computer industry for nearly thirty years, working for Interactive Systems Corp. (the first commercial provider of UNIX software) between 1979 and 1984 and Javelin Software (creators of an award winning PC modeling tool) from 1984 to 1987. In 1989, I co-founded Segue Software, currently the leading provider of web and client/server testing software, where I continued as a director and consultant until the company was sold in April 2006. I received a B.A. in Computer Science with a minor in Mathematical Economics from Yale University in 1975, and a Ph.D. in Computer Science from Yale University in 1984.

7. I have testified as an expert in deposition or at trial in three cases in the past four years:

- a. I was the Commonwealth of Virginia's technical expert and testified at trial in Commonwealth of Virginia v. Jaynes et al., Loudoun County Case No. CR0001588501;
- b. I was deposed as Hewlett-Packard's expert in VLIW Technology, LLC. v. Hewlett-Packard Co. and STMicroelectronics, Inc., Delaware Chancery Court Civil Action No. 20069-NC; and
- c. I was deposed as Microsoft's fact witness in Spreadsheet Automation Corp. v. Microsoft Corp., Eastern District of Texas, Marshall Division, Civil Case No. 2:05-CV-127-DF.

8. I have filed expert reports in two additional cases in the past four years:

- d. I filed a report as Google's expert witness in Field vs. Google, District of Nevada, Civil Case No. CV-S-04-0413-RCJ-LRL; and
- e. I filed a report as Google's expert witness in Perfect 10 vs. Google et al, Central District of California, Civil Case No. CV04-9484 NM.

II. Copying as part of computer and network applications

9. Computer software of any kind requires innumerable copies of computer data to be made.
10. For example, when a computer program is first started, the program itself must be copied from the computer's disk into the computer's main memory. Data must be copied from input devices such as keyboards into a program, and then from the program to screens and other output devices. When data is transmitted to or from a network, it is typically copied several times, between the program and a holding area in the computer's operating system, and between the holding area and the network itself.
11. Copying is particularly essential when using the World Wide Web. Whenever a user views a web page, that user's web browser fetches a copy of the web page to display. Sometimes the page is fetched from the web server that contains the page, but more often it is fetched from a *cache*, a storage area that contains copies of recently fetched pages that can be retrieved more quickly than from the original web server. The browser itself includes a cache of pages the user has recently viewed, and many Internet Service Providers (ISPs) provide a shared cache for all of their users.
12. Caches are essential to the operation of the web; the vast majority of page requests are handled from caches, relieving web servers of much of the load that would otherwise be placed on them. In the absence of caches, a popular web server would have to handle 10 or 100 times as many requests as it does now.
13. When a user fetches any but the simplest web page, the browser assembles the page the user sees from a combination of separate elements. The web page itself is in effect a recipe

written in the HTML computer language that includes instructions to the browser about what other elements are needed, such as graphic images and subpages, and how to assemble those elements into the page that the user sees. The browser follows the recipe, fetching copies of the elements as needed and assembling and displaying the page for the user.

III. Use of text and images in Web search engines

14. There are over eight billion web pages on the Internet. As a consequence, Internet search engines operate as card catalogs of the Internet, allowing users to locate information on a particular subject across the vast Internet with a simple search query, and are vital to the effective use of the Internet.
15. Google provides one of the most effective search engines available for free to anyone with an Internet connection. One of the means by which Google accomplishes the Herculean task of sorting through the billions of web pages on the Internet and returning search results in milliseconds is by constantly “crawling” the web to build an index of websites. During the indexing process, Google creates and stores a copy of each web page contained in its index in the Google system cache. Once this index is built, the Google search engine can quickly return a search results page containing links to those indexed web pages that it believes are relevant to the user’s query. It can also provide “snippets” of each relevant page – a few lines of text from the page – to provide context and show why the web page is relevant to a user’s query.
16. Automated crawling and indexing allows a search engine such as Google to produce and maintain an index that is far larger and more up to date than human editors can produce. Prior to the advent of automated search engines such as Google, manually-maintained Web directories were the primary search tool, and the difficulty and slowness of getting a web site into directories

was a chronic source of frustration to web masters. Getting one's web site listed in Yahoo's popular directory, for example, typically took upwards of three months unless one paid several hundred dollars to jump to the head of the line. As a result, manually-maintained directories were and are far smaller and less comprehensive than automated ones. The largest manual directory of which I am aware is the Open Directory Project (ODP), a freely available directory funded by AOL but maintained by 74,000 volunteers, of whom I am one. With the diligent efforts of all of the volunteers, it has grown to about 4 million entries. By comparison, Google's index contains billions of pages, a thousand times as large as ODP.

17. Google News uses a search technology similar to Google's web index. An automated process "crawls" a vast number of public news web sites and, using proprietary techniques (to which I am not privy) selects the most relevant news articles to display. As with the web index, it uses a small amount of text from the article and/or headline to provide context for the link to the article and to show why it is relevant. Google News' automated system searches 4,500 news sources [stated at <http://news.google.com>]. As with its Web index, automatic searching and indexing allows Google to index a far greater set of sources than a staff of human editors could.
18. Google News uses thumbnail images, small reduced-resolution versions of pictures, in the same manner as text snippets, to provide context for a link. People can extract reduced amounts of information from reduced-resolution thumbnails. For example, if an original picture of a famous couple such as Prince Charles and Princess Diana were be reduced to thumbnail size, people can still get some idea of who it is. This is why it has become standard practice to display thumbnails as identifying references, for users to evaluate the contents of pictures.
19. Because the thumbnails contain only part of the information in the original picture, the

customary practice is to link the thumbnails to the original picture in its original context (i.e., on the original web site), so the user can move to the original by clicking on the thumbnail. Google News follows this practice. When users click on the link, they see the original web site, including the original full size image, and any other material such as advertisements included by the web site's owner.

20. Google News' combination of automated searching and indexing to create an index to news stories organized by topic, with text snippets and image thumbnails to provide context for the displayed entries, makes it an uniquely powerful and useful tool for users' research and education. Its breadth of sources and quality of indexing are unrivaled.

21. Google News' organization by topic, rather than by date or by source as is typical in multi-source web sites, makes it possible to read, compare, and access a broad range of reports and opinions on a topic of interest to a user. Whenever I use it, I invariably find news on topics of interest from sources around the world that I never would have known about otherwise. For example, a recent visit to Google News provided links to stories in sources ranging from Reuters, Bloomberg, and the New York Times, to the National Geographic, the Telegraph in the U.K., the Hindu in India, to local newspapers throughout North America, to specialist online sources such as Ivanhoe for medical news and Tom's Guide to computer equipment.

IV. Site owners control indexing

22. Given the sheer number of websites and pages accessible on the Internet, it is simply impossible for a search engine to communicate, person-to-person with every website publisher or owner to determine the site's preferences on inclusion in a search engine's listings. Recognizing this impossibility, the Internet industry in 1994 developed standard protocols that allow for such

permissions to be communicated in an automated fashion by a website to a search engine. These standards can be found in countless locations on the Internet, including, for example, the popular Wikipedia online encyclopedia, located at <http://en.wikipedia.org/wiki/Robots.txt>.

23. The Internet protocols concerning indexing and caching of websites direct site publishers to include specific code within their sites that can be read by the automated software programs used by search engines to create their indexes and caches. These automated programs, known as "robots" or "spiders," automatically "crawl" the Internet or particular Internet sites in a manner similar to other Internet users – by sending requests to access a particular web page and receiving content in return. If, in the process of retrieving a website, these automated programs encounter any of the industry-standard directives, they are to comply with the site's directives on a variety of subjects, including directions concerning indexing and caching.
24. Google Web Search's and News Search's automated software program is known as the "Googlebot." The Googlebot crawls Internet websites to enable Google to create its index. I understand that the Googlebot respects the industry-standard protocols concerning crawling, indexing and caching web pages. I describe some of these protocols below.
25. If a website or web page is not crawled, Google does not provide a link to the site or page. Accordingly, a party can prevent a website from being included in the Google index by preventing the website from being crawled in the first place.
26. One method supported by Google to exclude robots from accessing a particular website is set forth in a very simple standard Internet procedure documented at <http://www.robotstxt.org/wc/norobots.html>. A website need only create a robots.txt file on the server hosting it which includes the following text:

User-agent: *
Disallow: /

27. This universal and highly publicized standard has been in existence since 1994. The use of and functionality provided by the robots.txt file is common knowledge for almost anyone publishing a website.

28. Google readily discloses information about the robots.txt standard on its website, including a link to the robotstxt.org website itself. Included on Google's "Webmaster Info" web site, located at <http://www.google.com/webmasters>, is a clear description of how to implement this method to prevent a web page from being crawled under the heading "How can I remove content from Google's index?" with sub-entries for "Remove your entire website," "Remove part of your website," and "Remove snippets."

29. Based upon my analysis of the Internet Archive's copy of Plaintiff's website at <http://web.archive.org/web/20020204070433/www.afp.com/robots.txt>, by early 2002, the Plaintiff's website <www.afp.com> included a robots.txt file.

30. The presence of a robots.txt file indicates that the individual who configured the web site understood the import of such a file – that is, that he or she knew how to use robots.txt to exclude all or part of a web site from an index. AFP could easily have instructed their subscribers to use robots.txt files on their own sites, to prevent AFP's material from being crawled and indexed. I see no evidence that they have ever done so. I know from my experience that Google's Googlebot does respect the instructions in a site's robots.txt file.

31. In addition to these methods to prevent Google from accessing, crawling and indexing a site or page, a website publisher may use industry standard protocols to instruct search engines (or

more generally “robots and spiders”) not to include a page in any index. The publisher need only include the following text on a web page that it does not want to be indexed:

<META NAME="ROBOTS" CONTENT="NOINDEX">

32. Google also provides and publicizes similar text that a web page designer may include on a web page to prevent use of text snippets from that page even if the page is indexed:

<META NAME="GOOGLEBOT" CONTENT="NOSNIPPET">

33. Included on Google’s “Webmaster Info” web pages, described above, are clear descriptions of how to implement these methods to prevent a web page from being indexed, and how to keep snippets from being used.

34. These techniques are not secrets. They are industry-standard methods of long standing, documented and described by many industry organizations, including the organization known as the World Wide Web Consortium. They are known or should be known even by inexperienced website operators or publishers. Indeed, many, if not most, companies that assist novices in creating and hosting websites detail these procedures for their customers.

35. A 1996 paper [Kollar et al, *Robots Revisited*, <http://www.kollar.com/robots.html>] noted with surprise than only about 6% of the web sites they surveyed had a *robots.txt* file to provide exclusion instructions. It rapidly became apparent that the vast majority of webmasters wanted their entire sites indexed, which remains true today, and it has become customary for search engines to index all available material except that excluded by *robots.txt* and META instructions. The design of the Robots Exclusion Standard, which permits indexing by default and lets webmasters identify the exceptions, matches user expectations well, and promotes the creation of large useful Web indexes, with the consent of the owners of the indexed material.

36. It is my opinion that given the industry standard and highly publicized nature of these directives, it is reasonable for a search engine to interpret the absence of such directives on a website as a grant of permission by the site operator or publisher to a search engine to crawl and index the site. Absent such implicit permission, and a system by which permissions can be communicated (or denied) automatically, search engines simply could not operate.

37. The vast majority of news sources also welcome inclusion in search engines such as Google's. For web sites, an entire industry known as Search Engine Optimization (SEO) has arisen to help webmasters get their sites listed more prominently. A recent article in the Wall Street Journal [*Google This: U.K. Papers Vie to Buy Search Terms*, WSJ, 12 Jan 2007, page B1] reports that newspapers in the UK and US go to considerable effort to improve their visibility in Google News. It says "Many papers are also tailoring their Web sites to attract Google's news site, which has links to thousands of news articles," and reports that in addition, major newspapers such as the Times and Guardian in London, and the New York Times, Washington Post, USA Today, and the Journal itself often buy paid "sponsored" links in Google's Web index. Since news source web sites are predominantly supported by advertising, and the advertising is charged per page view or per user clickthrough, they welcome search engines since the search engines provide increased user traffic to the web sites.

V. AFP provides tools to aid news aggregation web sites

38. A technique known as RSS (for Really Simple Syndication or Rich Site Summary) allows any Web site to provide a "feed" of items available on the site. RSS was originally invented to allow people to track changes to weblogs, but has proved equally useful for any Web site that offers regularly updated content.

39. An RSS feed is a specialized web page, intended to be read by computers rather than by people, that contains a list of recent items from an underlying web page or other online source. For example, I maintain a weblog at <http://weblog.johnlevine.com> where I post new articles from time to time. My weblog has an accompanying RSS feed that contains the date, title, and first few lines of each article, which is automatically updated each time I add a new article to the weblog. Originally RSS was limited to text material, but now feeds are widely available for images, audio, and video material. (An RSS feed of audio or video is often called a podcast.) RSS feeds have become a standard part of web technology, and directories such as octora.com, feedminer.com, and America On Line's about.aol.com/feeds list hundreds of thousands of them.

40. RSS has proven to be an ideal way to provide access to the frequently updated information from news organizations. Most major news providers offer RSS feeds at no charge, including newspapers such as the New York Times and Wall Street Journal, radio and TV including CNN and NPR, and news agencies including the Associated Press, UPI, Reuters, and Agence France Presse.

41. Because RSS feeds are not easily read by human users, a wide variety of *aggregators* have been created that take a set of user-specified RSS feeds and create easy to use versions of the material in the feeds, tracking which items the user has already seen, and presenting the new material from the various feeds. Aggregators take many different forms, from web sites to add-ins that run as part of a Web browser to independent programs that run on a computer's desktop. Different aggregators organize and display the material from RSS feeds in a wide variety of ways, limited only by the imagination of the creator of the aggregator. Some aggregators make the material appear as folders of e-mail messages, some as web pages in a wide variety of text or

graphics formats, and some in exotic forms such as animated screen savers. Different aggregators organize material in different ways, some by source, some by date, some by more complex criteria.

42. RSS aggregators allow Internet users to create web pages or other displays that combine material from many different sources via the sources' RSS feeds. A web-based aggregator produces web pages combining news from many sources, similar in concept to Google News, albeit without Google News' unique indexing and organization. Exhibits A, B and C show four popular web-based aggregators: NewsAlloy at www.newsalloy.com, Bloglines at www.bloglines.com and Newsgator at www.newsgator.com. In each case, I created a no-charge personal account, and then added four RSS feeds that news organizations provide to the public: the Associated Press' Top Political News from www.ap.org, the New York Times National News from www.nytimes.com, AFP's English language wire stories from www.afp.com, and AFP's Top Photos which they distribute through My Yahoo at my.yahoo.com. Each aggregator shows a selection of stories from the four sources provided via the RSS feeds, using headlines, snippets of text, and photographs. Different aggregators organize the results differently. Bloglines and Newsgator organize by source, while NewsAlloy interweaves stories from different sources organized by date. They also differ in other details of user configuration, and operation, so it is to be expected that even though all three exhibits were created at about the same time, the selection and arrangement of stories in each is somewhat different.

43. I believe that RSS aggregators have many of the same characteristics that AFP has objected to in Google News: they show snippets of text and pictures from the underlying sources, combined in ways that are determined by the aggregators rather than by the sources. As with

Google News, each source has the choice of participating or not, by providing an RSS feed or not. Since AFP and its licensee do provide RSS feeds, I conclude that they do desire that their material be made available in this fashion.

44. I am compensated at the rate of \$400.00 per hour for my work on this case.

/John R. Levine/

Dated: January 29, 2007

EXHIBIT A


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→ AFP Top Photos on Y 13

→ AP Top Political Ne 1

→ NYT National News 1

Tags

News**Subscribe****Settings****My Account****Feedback****Feed Directory****Inbox | All News | (20 Jan - 31 Jan , 2007)**
 Subscribed Feeds: 4 , Channels: 0 | RSS 2.0 | Create New Channel | Subscribe to Feed

Total: 48

Select: All, None, Read, Unread, Pinned, Unpinned, Full, Short, Reset All

Selected: 0

 New House Speaker Shows She's Boss
 21 Jan 2007 17:34:07 | AP Top Politica... | By ERICA WERNER | Views: 0

WASHINGTON (AP) -- Sworn in just over two weeks ago as the first female speaker of the House, Nancy Pelosi wasted no time showing who's boss....

Tags: [\[+\]](#)
 US aims to trump skeptics with Mideast push
 21 Jan 2007 09:12:01 | AFP - Wire stor... | Views: 0

WASHINGTON (AFP) - The United States is promising an "intense" diplomatic drive in the Middle East, hoping to buck regional skepticism and its own weakened position by cracking ope

Tags: [\[+\]](#)
 New Orleans of Future May Stay Half Its Old Size
 20 Jan 2007 10:44:05 | NYT National Ne... | ADAM NOSSITER | Views: 0

Some economists and demographers wonder whether New Orleans will top out at about half its prestorm population.

Tags: [\[+\]](#)
 There she goes... : The McNaught comet is seen early morning ...
 19 Jan 2007 21:26:25 | AFP Top Photos ... | (AFP) | Views: 0

(AFP) - There she goes... : The McNaught comet is seen early morning from Pucon, Calafquen Lake sector, Chile. (AFP/David Lillo)

Tags: [\[+\]](#)
 Prominent Turkish-Armenian journalist shot dead in Istanbul
 19 Jan 2007 21:09:57 | AFP - Wire stor... | Views: 0

ISTANBUL (AFP) - Turkish-Armenian journalist Hrant Dink, targeted by nationalist circles and the courts for his views on the 1915-18 killings of Armenians, was shot dead outside hi

Tags: [\[+\]](#)
 Yukos assets valued at 22 billion dollars
 19 Jan 2007 19:19:53 | AFP - Wire stor... | Views: 0

MOSCOW (AFP) - The remaining assets of shattered oil company

01/21/07 12:57

EXHIBIT B

Bloglines



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8 Items | Sort Oldest First | Updated: Sun, Jan 21 2007 12:12 PM

[The abandoned soldier : Veteran serviceman Denzil Connick\(C-L\) ...](#)

By (AFP)

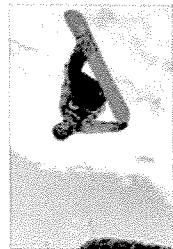


(AFP) - The abandoned soldier : Veteran serviceman Denzil Connick(C-L) stands beside ex-nurse Nicci Pugh(C) in front of an 'unauthorised' bronze statue erected to honour British servicemen inside the perimeter of Trafalgar Square in London. (AFP/Adrian Dennis)

Posted on: Sat, Jan 20 2007 7:08 PM | [Email This](#) | [Clip/Blog This](#)Keep New:

[Major air : New World champion France's Mathieu Crepel flies ...](#)

By (AFP)



(AFP) - Major air : New World champion France's Mathieu Crepel flies in the air on his way to win the men's Half Pipe final at the FIS Snowboard World championships in Arosa. (AFP/Fabrice Coffrini)

Posted on: Sat, Jan 20 2007 7:07 PM | [Email This](#) | [Clip/Blog This](#)Keep New:

[The abandoned soldier : Veteran serviceman Denzil Connick\(C-L\) ...](#)

By (AFP)

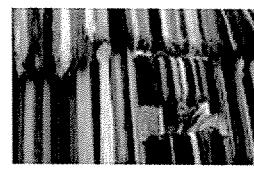


(AFP) - The abandoned soldier : Veteran serviceman Denzil Connick(C-L) stands beside ex-nurse Nicci Pugh(C) in front of an 'unauthorised' bronze statue erected to honour British servicemen inside the perimeter of Trafalgar Square in London. (AFP/Adrian Dennis)

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[All tied up : A shoe ties vendor is pictured in Belgrade. \(AFP/Daniel ...](#)

By (AFP)



(AFP) - All tied up : A shoe ties vendor is pictured in Belgrade. (AFP/Daniel Mihaiescu)

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EXHIBIT C

 jrlevine2

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- [APF Top Photos on Yahoo! News Photos \(50\)](#)
- [AP Top Political News At 1:26 p.m. \(20\)](#)
- [NYT > National \(6\)](#)

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[Insight](#) (66 incoming links)

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25 US troops killed in a single day in Iraq Ads by Google

1/21/2007 11:49:00 AM

BAGHDAD (AFP) - At least 25 US troops were killed across Iraq in one of the deadliest days for the American forces since the invasion began, as the military said 3,200 new troops had arrived to quell Baghdad violence.

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Merkel calls for improved EU-Russia energy ties

1/21/2007 11:44:00 AM

SOCHI, Russia (AFP) - German Chancellor Angela Merkel called for improved energy ties between Russia and the European Union to avoid "tensions" following supply disruptions.

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Abbas holds talks with Hamas rival to end crisis

1/21/2007 11:27:00 AM

DAMASCUS (AFP) - Palestinian president Mahmud Abbas and exiled Hamas supremo Khaled Meshaal began talks in Damascus in a bid to end an often violent power struggle and form a government of national unity.

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Turkish teenager confesses to killing journalist

1/21/2007 10:04:00 AM

ISTANBUL (AFP) - A 17-year-old prime suspect in the killing of Turkish journalist Hrant Dink, one of his country's most prominent ethnic Armenians, has confessed to the murder, a prosecutor has said.

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Iran defiant on UN sanctions, plans war games

1/21/2007 9:34:00 AM

TEHRAN (AFP) - President Mahmoud Ahmadinejad has vowed that Iran will never bow to UN resolutions over its nuclear programme, as the military prepared for war games that will include short-range missile tests.

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Democratic field grows after Hillary throws hat into ring

1/21/2007 9:28:00 AM

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WASHINGTON (AFP) - One day after Senator Hillary Clinton tossed her hat into the 2008 presidential race, the crowded field of US presidential contenders has expanded, setting up a pitched battle for donors and support.

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Merkel meets Putin for EU energy security talks

1/21/2007 8:14:00 AM

SOCHI, Russia (AFP) - German Chancellor Angela Merkel has met with President Vladimir Putin in the Black Sea resort of Sochi for talks set to focus on securing guarantees for energy supplies to the European Union.

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Abbas set to meet Hamas rival to end crisis

1/21/2007 7:19:00 AM

DAMASCUS (AFP) - Palestinian president Mahmud Abbas is set to meet exiled Hamas supremo Khaled Meshal in Damascus in a bid to end an often violent power struggle and form a government of national unity.

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US boosts Baghdad force as death toll jumps

1/21/2007 6:59:00 AM

BAGHDAD (AFP) - More than 3,000 US paratroopers have landed in Baghdad to help quell raging sectarian violence, the military has announced, after US losses surged with 19 troops killed in a single day.

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Abbas set to meet Hamas rival to end crisis

1/21/2007 6:53:00 AM

DAMASCUS (AFP) - Palestinian president Mahmud Abbas is set to meet exiled Hamas supremo Khaled Meshal in Damascus in a bid to end an often violent power struggle and form a government of national unity.

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