

Linda REYNAERT* – Jules CALLEBAUT

Licenciaten in de Rechten – Licenciés en Droit
GERECHTSDEURWAARDERS – HUISSIERS DE JUSTICE

Ortwin VERSCHUERE*

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FIN. : 645-1620187-31

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REFERENCE: A15346 / GT

SUMMONS

(ART. 86bis of the law dd. 30th June 1994 on copyright and related rights)

Considering that my hereafter better described plaintiff, COPIEPRESSE, is the management company of the rights of the Belgian publishers of the daily French- and German-speaking press, authorized by the M.D. dd. 14th February 2000 and 20th June 2003 (MB dd. 10/03/2000 and MB dd. 14/08/2003) to carry out its activities on Belgian territory from the date an excerpt of its articles of association are published in the Moniteur belge [Belgian State Gazette];

That my plaintiff's company objective is to defend the copyright of its members (actual rights of the publishers and acquired rights of the journalists) and to regulate the use of the protected work of its members by third parties

Considering that the COPIEPRESSE directory is available on its website (<http://www.copiepresse.be>).

That the plaintiff is moreover entitled to go to court.

Considering that my plaintiff has discovered that the hereafter better described company under American law, GOOGLE INC published entire articles or article excerpts from its list of editors to be read by the public at large through:

- "GOOGLE NEWS": reproduction and partial publication,
- "GOOGLE SEARCH": Full reproduction and publication via its "cached" pages,

Considering that to date, GOOGLE INC has only received one permit to reproduce the contents of the websites of the publishers featuring in the Belgian COPIEPRESSE directory with the sole purpose of allowing these latter parties to be referred to on the search engine (GOOGLE SEARCH).

That this permit does not cover the other services offered by GOOGLE INC, i.e. notably "GOOGLE NEWS". Neither does it cover access to the "GOOGLE SEARCH" "cached" pages.

Considering that the dispute between my plaintiff and GOOGLE INC gave rise to a judgment handed down by the President of the Court of First Instance of Brussels sitting in injunction proceedings on 13th February 2007 (Civ. Brussels (inj.), 13th February 2007, GR no. 06/10928/A)

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That even if this judgment were to be appealed by GOOGLE INC, its quality on a legal level has been unanimously recognized by various doctrine articles.

That COPIEPRESSE therefore sees itself forced to uphold its position, which was also followed by the President of the court of first instance of Brussels in his judgment dd. 13th February 2007 and in respect of which doctrine concludes: *"This concerns the correct application of copyright which has to be made quite clear, before the Belgian decision is copied in all the countries..."* (S. DUSSOLIER, The clay-footed giant: Google News and copyright, Lamy, Intangible Rights).

That these proceedings seek to have GOOGLE INC ordered to redress the loss suffered by the COPIEPRESSE principals as a result of the violation of copyright.

Considering that compensation for the loss covers various positions and that its foremost objective is to restore the injured party to the situation he was in as if the offence had never been committed.

That the compensation must cover all the loss items.

That on grounds of article 86 A of the law dd. 30th June 1994 concerning copyright and related rights introduced by the law dd. 10th May 2007 concerning the civil aspects of the protection of intellectual rights: *«. § 1st. Without prejudice to § 3, the injured party is entitled to be compensated for any loss he has suffered as a result of the violation of copyright or related right. § 2. If the extent of the loss incurred cannot be determined in any other way, the judge may set a reasonable and fair fixed amount for damages.»*

That my plaintiff has asked Professor Alain Berenboom (Université Libre de Bruxelles [Free University of Brussels]) to put the extent of the loss incurred into figures.

That at the end of a 26-page report Professor Berenboom concludes that the loss suffered ranges between a minimum of 32,793,366.00 euro and a maximum of 49,190,049.00 euro.

That Professor Berenboom's calculation is based on the number of articles the judicial officer appointed by COPIEPRESSE discovered after the "flagship" websites of the Belgian publishers represented by COPIEPRESSE had been blacklisted.

Considering that in a note drawn up in conjunction with Mr. Magrez, another method of calculation was used which sets the loss at an amount of 39,751,146 euro.

That this other method is based on an estimate of the traffic in relation to the newspaper articles on "GOOGLE SEARCH" and "GOOGLE NEWS".

That once the figures from Mr. Magrez and Professor Berenboom were reconciled the latter concludes that *"the additional damages awarded by the courts usually range between 100 and 200 % of the amount of unpaid royalties. In view of the amounts at stake, we think that the judges will lean towards applying damages of 100 %. It is therefore the minimum amount which should be sought. On that basis it is appropriate to set the loss suffered at the amount of 32,793,366 euro."*

That it must be noted that these assessments have been made for one single year only and do not target, as far as "GOOGLE SEARCH" is concerned the entire period not covered by statutory limitation (i.e. 5 years).

Considering that these bills have already been forwarded to Counsel of the summonsed party.

That my plaintiff leaves it up to Your Court to decide whether additional damages of 100% on the evaded royalties should be awarded which would bring the overall amount to 49,190,049.00 euro.

Considering that if GOOGLE INC were to contest the number of articles or the estimate of the traffic in relation to the newspaper articles, Your Court cannot take these claims in support of their own case into account so that an expert's appraisal will be unavoidable.

That in fact statements made by one party in support of his own cause are merely claims on which the judge cannot base himself if these claims are not backed up by other elements or some other form of presumption.

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So that proper justice would be done it would be appropriate to ask GOOGLE INC. before any ruling is made whether they contest the data on the basis of which the calculations were made at the behest of COPIEPRESSE.

Considering that in the event the summonsed party was to contest, it would be appropriate to appoint a panel of experts whose task is further specified hereafter.

That in that case, COPIEPRESSE suggests that as date of the interruption of statutory limitation the date on which the ruling by the Dstraint Judge with the Court of First Instance dd. 23rd March 2006 was served, in which Expert GOLVERS was appointed, i.e. 13th April 2006, should be considered.

Considering that in view of the assessments already made (i.e., between 32,793,366.00 and 49,190,049.00 euro), my plaintiff deems they should already be provisionally awarded a sum of 4,000,000.00 euro.

FOR THESE REASONS:

In the year two thousand and eight, on TWENTY-TWO..... MAY.

AT THE PETITION OF:

The association under the form of a Limited Liability Co-operative Society **COPIEPRESSE**, registered with the Crossroads Bank for Enterprises under number 0471.612.218, RPM [Register of Legal Entities] BRUSSELS, with registered offices in 1070 ANDERLECHT, Boulevard Paepsem, 22,

With Counsel Mr. **Bernard MAGREZ**, Solicitor, with chambers in 1180 UCCLE, Avenue Winston Churchill, 149,

I, the undersigned, **Ortwin VERSCHUERE**, Judicial Officer temporarily replacing Linda REYNAERT, Judicial Officer, with chambers in 1180 UCCLE, Rue Victor Allard 143.

HAVE SUMMONSED:

The company under American law **GOOGLE Inc.**, with registered offices in MOUNTAIN VIEW 94043 CALIFORNIA / USA, 1600 Amphitheatre Parkway,

SERVING MY WRIT AS DESCRIBED HEREAFTER.

To appear on **THURSDAY EIGHTEENTH of SEPTEMBER 2008** at **NINE O'CLOCK** in the morning before the **FIRST CHAMBER OF THE COURT OF FIRST INSTANCE OF BRUSSELS**, sitting in its normal hearing rooms, ROOM 0.10, at the Palais de Justice [Court House], Place Poelaert, in said BRUSSELS,

IN ORDER TO:

For the aforementioned reasons and all others to be enforced in place and in time and here under explicit reserves.

Pronounce the claim admissible and founded;

Rule in law that by running the information portal **GOOGLE NEWS** without prior permission and by giving access to the "cached" pages on its search engine "**GOOGLE SEARCH**", **GOOGLE INC** has violated the Belgian legislation on copyright and related rights.

Rule in law that GOOGLE INC cannot invoke any legal exception; not of article 10 of the European Convention on Human Rights; nor the liability exemption granted to technical operators by the law on e-commerce. 12/8

Before ruling in the event that GOOGLE INC were to contest the number of articles and the assessment of the traffic in relation to the newspaper articles, data which form the basis for the assessments carried out at the behest of COPIEPRESSE, to appoint a panel of experts, at the exclusive expense of GOOGLE INC., consisting of at least one IT-specialist and a certified public accountant or company auditor who shall have the task to:

- During the inaugural meeting:
 - o Define the methodology to be used
 - o Determine the cost provision to be deposited with the court registry
- Attempt to reconcile the parties;
- Draw up a list of the articles which were published on GOOGLE NEWS before GOOGLE INC gets rid of them;
- Draw up a list of the articles which were published on GOOGLE SEARCH prior to and after the black-listing and this from 13th April 2001 onwards;
- These first two lists shall specify for each article:
 - o The publication,
 - o The year of publication,
 - o The title of the article,
 - o If possible, the author of the article,
 - o Whether the article was published in full or whether only an extract was published
 - o if GOOGLE added any information or made any changes to the original texts.
- To have the logs of the GOOGLE server hits forwarded in order to establish:
 - o The number of "cached" articles which were looked at on GOOGLE SEARCH since 13th April 2001
 - o The number of visits to GOOGLE NEWS since it was launched in Belgium and since the Belgian newspaper articles were withdrawn
 - o The number of visits by GOOGLE NEWS to the publishers since its launch in Belgium and this until all the newspaper articles on the websites listed in the COPIEPRESSE directory which were published on the COPIEPRESSE website were withdrawn.
 - o Any information GOOGLE INC retains on GOOGLE SEARCH and GOOGLE NEWS in relation to the searches carried out and visits paid and more generally, in relation to the visitors who were redirected to the newspaper sites.
- File their report six months from the date of the inaugural meeting

Order GOOGLE INC to pay my plaintiff the **provisional amount of 4,000,000 euro on an amount which has provisionally been estimated to lie between 32,793,366.00 and 49,190,049.00 euro.**

Finally, to order the summonsed party to publish in a visible and clear manner (character and font size: Arial: 10) and without any commentary on their part, the entire intervening judgment on the home pages of GOOGLE.BE and NEWS.GOOGLE.BE for a continuous period of 20 days from the date of its service, under penalty of a daily fine for non-performance of one million euro per day of delay.

Order GOOGLE INC to pay compensatory interests dating back to the moment the violation of copyright was established.

Award all the costs of the proceedings, including the litigation expenses which, in view of the significance of this case, have been set at € 30,000 against GOOGLE INC.

Order the provisional enforcement of the intervening judgment notwithstanding any arrestation or appeal and without surety or cautionment.

Action based on the above adduced reasons, the laws and decrees on the matter and on all other grounds to be enforced in place and time and which are here fully and expressly reserved and without any prejudicial acknowledgement.

And in order that the addressee thereof should not plead ignorance, but considering that this party is based/domiciled in the UNITED STATES OF AMERICA and considering that I do not know any residence nor elected domicile in Belgium of this party, I the undersigned and aforesaid Judicial Officer, have sent, pursuant to the International CONVENTION with regard to the service and notification abroad of judicial and extra-judicial documents in civil and commercial cases, drawn up in THE HAGUE on 15 November 1965 (approved by the law of 24 January 1970 – Belgian Official Gazette of 9 February 1971), by registered mail with acknowledgment of receipt, deposited today at the post office in UCCLE, rue du Postillon , 10 :

1. one application, properly completed in English, corresponding to the model form that is appended, in enclosure, to this Convention;
2. two copies of the present writ, as well as the documents mentioned therein, each copy of the writ accompanied
 - a. with a form that describes the summary of the document to be served, drawn up in English;
 - b. with a translation in English

3° with the proof of amount of \$ US 95

to the following private company appointed by the United States of America, empowered to act on behalf of the Central Authority, to wit :

PROCESS FORWARDING INTERNATIONAL
633 Yesler Way
SEATTLE, WA 98104
USA

asking the latter to :

1. to serve on the company under American Law GOOGLE Inc. registered offices of which are based MOUNTAIN VIEW 94043 CALIFORNIA / UNITED STATES OF AMERICA, 1600 Amphitheatre Parkway, one of the copies of this writ, as stated in subsection 2° above, accompanied by the translation thereof, as well as the form that describes the nature and the subject matter of the document, in accordance, as such, of the methods of procedure, in the legal texts of the petitioned country, laid down for the service or notification of documents drawn up in that Country and meant for individuals living there, notably in pursuance of article 5, sub-section 1a of the aforesaid Convention;
2. to kindly return to me the other copy, along with the declaration, provided for in article 6 of the Convention, amounting to the fact that the application has been implemented, at the same time stating in what form, in which place and at what point in time this was carried out, as well as the person to whom the document is issued, or, should the occasion arise, stating the circumstances which have obstructed the application;

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And whereas article 10 of the aforesaid Convention allows, among others, for the unimpeded authority to send judicial and extra-judicial documents, directly by post, to individuals who are located abroad, and that the UNITED STATES OF AMERICA do not oppose to this possibility, I have also sent one copy of the present writ (as well as the documents notified therein), as well as a form containing the summary of the document to be served, and a translation into English, under registered cover with acknowledgement of receipt, to the address of the addressee in the UNITED STATES OF AMERICA, at the aforesaid post office of UCCLE, rue du Postillon 10

And I have likewise attached the receipts of these registered letters to the original of the present writ;

WHEREOF RECORD.

Costs : four hundred and thirteen Euro and forty-two Cent,
to be raised with the costs of the translation into English, to wit : 383,33 EUR

The Judicial Officer,

FF 110,63
FF/5 44,26
FEE N 9,98
TRIP 7,80
PORT 25,00
REG 25,00
PLS 3,75
CRL 82,00
USA 105,00

TOT 413,42
TRANSL

383,33

TOT 796,75

Certified a true translation from French into English,
L. VANPARIJS Sworn Translator.

