

November 10, 2006

## **Frequently Asked Questions Regarding the legal action of the French Publishers Association (SNE) against Google**

- **Why has the French Publishers Association (Syndicat national de l'édition/ SNE) decided to join publishing group La Martinière as a party in its lawsuit filed on June 2, 2006 against Google Inc. and Google France?**

The SNE has joined publishing group La Martinière as a party in its lawsuit in the **collective interest of all publishers** and in order **to defend the fundamental principles of copyright**.

Last November, **the French Authors Association** (Société des Gens de Lettres/ SGDL) also decided to join the proceedings as party, in the collective interest of authors, on the grounds of copyright infringement, in particular to authors' moral right.

Publishers and authors are united in this common fight for the respect of copyright, which is obviously infringed by Google through its Google Book Search Project for Libraries.

Within the framework of agreements signed with major Anglo-Saxon libraries, Google is digitizing entire books and making them available on the Internet, either in their full text version in the case of books in the public domain, or through excerpts in the case of books in copyright. But the unlimited number of possible extracts depending on searches implies that an entire work could be technically accessible by Internet users. Furthermore, both the digitization of copyright protected works and their making available are undertaken without the authorization by publishers and authors who hold the rights.

- **What is the SNE requesting?**

The SNE is acting **on principle**, and is requesting merely nominal damages in the amount of one euro. However, to ensure that the infringement is promptly put to an end, SNE is also asking the court to impose hefty fines on Google for each day of delay in implementing any judgement in favour of the claimants (500,000€ per infringement and day). Moreover, the SNE requests the publication of the court decision in several newspapers and on the search engine's website.

- **Are there any other similar legal actions in the world?**

SNE's legal action is initiated in the same context as the one of its US and German counterparts. In 2005-2006, representatives of US authors (the Authors Guild) and publishers (the Association of American Publishers/ AAP), as well as German publisher WBG, supported by the German Publishers Association (Boersenverein) brought legal actions against Google, essentially objecting to the unauthorized digitization and making available of copyrighted works. (WBG has since withdrawn its request for an injunction in June 2006 upon the recommendation of the judge of the Hamburg Court for formal reasons not touching upon the core issues of the case.).

- **Why are publishers opposing Google's initiative, in the name of copyright, while the search engine states that it contributes to making information and culture freely available to users?**

Copyright, invented during the Enlightenment Century to protect intellectual works, is a human right enshrined in several international treaties, including the UN Convention on Human Rights. It is the result of a **delicate balancing act between the interests of the creator and the needs of the user.**

Creation and dissemination of content necessitate the investment of time, effort, skill and financial resources, which mandates **appropriate remuneration for creators.** Without intellectual property rights, creators would be deprived of any incentives to create and disseminate content.

In particular, the return on investment generated by copyright allows the emergence of new talents and local creators, as it notably contributes to compensating the losses of products which have not met the expected success, and to financing future investments. Without this cross-subsidization between best-sellers and backlist books, the business model of creation would be undermined. **There is no cultural diversity without respect of copyright.**

Moreover, the copyright framework ensures the independence of literary works: the possibility to commercially exploit one's creations means independence from sponsors, making remuneration dependent on their satisfaction with the created content.

Although Google's offer may seem generous at first glance, there should be no mistaking that **its involvement in the Book Search Project for Libraries is based on commercial motives only.** Google's business model is based on the sale of advertisements, placed and priced depending on the traffic on its site. Through its Book Search Project for Libraries, Google aims at increasing user traffic on its site, which enables it to increase its advertising revenues.

- **Isn't Google accommodating publishers' concerns by proposing them to remove from its Book Search Project, upon request, books it has already digitized and whose excerpts it has already made available without their authorization?**

By proposing publishers an “opt-out” approach, Google reverses the normal requirements of copyright to advance its own interests. Publishers should remain free to “opt in”, and participate in the project if, and only if, they wish to, just like in any other commercial initiative.

Publishers merely find it unacceptable to be presented with a “fait accompli” and to only be offered a retrospective option.

- **Can one really refer to copyright infringement given that Google only makes excerpts or “snippets” available in cases of copyright protected texts? Couldn't the “fair use” exception in US law allow for such a use?**

Although each request based on a keyword gives the public the ability to retrieve only 3 excerpts, there is an unlimited number of possible searches. The entire work, which is copied or digitized in its entirety by Google without the prior authorization of right-holders and stored in multiple forms on its server farms, could thus be accessible by linking successive excerpts.

The application or not of the “fair use” exception in relation to excerpts made available online without the authorization of publishers is not obvious at all and will be the subject of debates and of a decision by a US court. Notwithstanding, the “fair use” exception does not exist in European nor in French laws.

- **Is the action of French publishers against Google an opposition to digitization in general and to the creation of digital libraries?**

On the contrary! French publishers are actively involved in **various initiatives for the digitization and distribution of their digital content**. Their offers are already available, either via subscription in the case of online databases, for instance in the legal sector, via educational multimedia products or electronic books accessible for download or lending on distribution platforms (ex. : Numilog, Cyberlibris, Cairn...). French publishers are also taking part in the discussions with the French Ministry of Culture and the French National Library, in charge of the European digital library project at French level since 2006.

It is exactly because of the variety of opportunities provided by the digital environment that French publishers would like to keep their **freedom to enter into commercial relationships with any partner of their choice**, including Google within the framework of its Book Search for Publishers Project. Publishers also fear to open the floodgates: letting Google digitize books under copyright supplied by some libraries could be interpreted as meaning that they consent to all other unauthorized digitization initiatives undertaken by other stakeholders.

Publishers would consequently be deprived from commercially exploiting their works themselves, works that are the result of contractual agreements signed with their authors.