

Google Loses in French Copyright Case

See this report of the *New York Times*:

A French court ruled on Friday that Google infringed copyrights by digitizing books and putting extracts online without authorization, dealing a setback to its embattled book project.

The court in Paris ruled against Google after a publishing group, La Martinière, backed by publishers and authors, argued that the industry was being exploited by Google's Book Search program, which was started in 2005.

The court ordered Google to pay over 300,000 euros, or \$430,000, in damages and interest and to stop digital reproduction of the material. The company was also ordered to pay 10,000 euros a day in fines until it removed extracts of some French books from its online database.

✖ The French plaintiffs had sued both Google, Inc. and Google France.

Google had first challenged the jurisdiction of the French first instance court. On March 17, 2007, the court rejected the challenge and retained jurisdiction. I do not know what the precise arguments were, nor how the Paris first instance Court actually addressed them.

Google then argued that American law controlled. It relied on Article 5 § 2 of the Bern Convention. The Paris court applied the French common law of conflicts (but did not say why) and ruled that French law was applicable. It applied the choice of law rule that the French supreme court for private and criminal matters (*Cour de cassation*) has laid down for tort matters in the last 15 years or so. The rule provides that the applicable law is the place where the tort was committed. When the tort is “complex”, i.e. when the event giving rise to the damage and the damage occurred in different places, the place should be determined by assessing the proper law of the tort, i.e. which place is the most closely connected. The Paris court ruled that this was a complex tort, and looked for the various connections between the case and France (but did not weigh them against

connections with the U.S.). It identified many, and then concluded that the dispute was more closely connected with France. The connecting factors identified by the court were: the litigious books were French, the plaintiffs were French, one defendant was a French company (Google France), and the site was a dot_fr site, available in the French language.

Finally, it is noteworthy that the only company which is ordered to pay damages and to stop violating French law is the American entity, Google, Inc., and that an injunction has been issued against it to stop violating French law under an *astreinte* (a civil penalty, not a fine as the NYTimes reported) of € 10,000 per day of non-compliance (on the recent case law of the *Cour de cassation* on injunctions against foreign based web sites, see my previous posts [here](#) and [here](#)).

Many thanks to V. Gaertner and B. Hess for providing me with the judgment.