Column
IP Lawyer

Written by
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Google – fighting a war on all fronts

The company that does no evil is facing a number of challenges from rights owners unhappy with its business models

For a company whose motto includes the phrase "Do No Evil" the Google of 2007 finds itself with a lot of enemies. The last 5 years has seen a number of cases brought against Google by intellectual property rights owners keen to ensure that Google does not profit unduly from their investment. Google's products and services, and the technologies used to implement them, have in many cases broken new ground and have raised serious questions of how current legislation regarding intellectual property rights should be applied to deal with them.

The first service to be subject to legal challenge was AdWords, Google's flagship advertising product and main source of revenue. AdWords allows advertisers to specify the words that should trigger the appearance of their adverts. This facility has led some advertisers to specify trademarks as the triggers to their own sponsored adverts. Trademark owners however have been fighting back.

In the early US cases on the issue – *Geico v Google Inc* and *Rescuecom v Google Inc* – the courts held that Google's use of trademarks as triggers was not trademark infringement. However, two subsequent developments suggest that the legal tide in the US may be turning against Google.

Google's recent appeal to have an AdWords case summarily dismissed in the US has been rejected, with the judge deciding that the question should go to a full trial. In addition, the Utah state legislature has this month introduced a bill which creates a new "Electronic Registration Mark", protecting registered owners from the kind of activities employed by competitors in AdWords. However there is some doubt as to whether this legislation will be passed.

Most of the decided European cases on the issue of AdWords have been heard in France and in each case, the courts found that AdWords infringed the rights of trademark owners. France is therefore a favourite jurisdiction for trademark owners seeking to protect their marks from unscrupulous AdWords advertisers. Far more so than Germany, where in the leading case of *Metaspinner* the court followed the line adopted by the earlier US cases.

The English Appeal Courts have indicated in the Court of Appeal decision in *Reed v Reed* that, tested on the point, they would be likely to adopt the US approach.

Another Google offering that has been subject to legal challenge is Google News. Google News is a computer-generated press review and search tool, with the ability to sort between different topics such as sport and business.

In 2006 Google News' Belgian offering came under attack from Copiepresse, an association of Belgian newspaper publishers. Copiepresse claimed that both Google's display of the title and first few sentences of newspaper articles on the home page of Google News, as well as its inclusion in general search results of links to cached copies of the articles, constituted copyright infringement.

The court sided with Copiepresse and rejected Google's arguments that the material displayed on its site was not substantial enough to constitute copyright infringement. It also rejected Google's claim that it had an implied licence from the newspaper publishers to display the stories, stating that it was not the publisher's responsibility to block Google's access to its articles, but rather Google's responsibility to get permission. We understand that Google are appealing the decision.

This may not be the last time that Google has to defend its Google News service. Some businesses such as Copiepresse accuse Google of seeking to build a business model on the back of their investment in content, without compensating the content provider. Google argues that services such as Google News are a legitimate variation of its established search services, which need no prior permission from the copyright owner.
The *Copiepresse* decision signifies that at least the Belgian courts are sympathetic to the content providers' arguments.

Perhaps the most ambitious of Google's recent offerings is its Google Books Library Project. The project is an attempt to digitise large quantities of the world's books, making them fully searchable. A step in achieving this goal was to secure agreements with some of the world's major libraries to scan their collections and make the results searchable online.

The controversy arises in those books in which copyright still subsists.

The US Author's Guild have objected to the project on the grounds that by scanning the libraries' copyrighted texts without the permission of the publisher or author, Google is committing copyright infringement on a massive scale, damaging the author or publisher's ability to license the material as they wish.

There has been some suggestion by commentators that Google will escape liability in the US under the "fair use" privilege. This is only the tip of the iceberg however as Google's users span hundreds of jurisdictions, each with their own interpretation of copyright law, many taking a stricter line on infringement than the USA.

Each of these cases provides an example of the struggle facing existing legal frameworks around the globe in trying to keep up with the rapid innovation of the internet. To date, Google and other innovative internet-based companies have had a free rein to produce more efficient methods of organising and retrieving the world's information. As they extend their activities beyond plain text search into areas such as news, images and video, they are finding that rights owners are more likely to see them as competitors and to seek grounds for legal challenge. It is to be hoped that the law will adopt a balance between rights owners and internet innovators. That balance would need on the one hand to avoid unduly restricting the development of the internet but also to ensure that rights holders are protected where their legitimate interests are threatened.

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