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A BELGIAN 'CACHE 22' AFTER COURT RULING

By George Metaxas

A courtroom victory by an obscure Belgian copyright society has potentially serious international implications for the whole internet industry.

In many countries the internet search engine giant can rely on "fair use" exceptions to use copyright-protected content without author's express consent. But Belgian and some other European copyright laws have stricter rules and on 13 February a Brussels court awarded victory to Copiepresse, which represents French and German-language publishers, in its claim against Google.

Its argument was that Google infringed copyright on titles and extracts from Belgian press articles through its Google News service and by making 'cached' content directly accessible to users ('caching' is the duplication of data on a network's servers to speed up access by users).

Financially, the case means less than peanuts for Google. Advertising or other revenues lost if a few Belgian newspapers are excluded from Google News are close to nil. The court was also fairly generous to Google, reducing its initial daily penalty from €1.5 million to €25,000 until Google withdraws the articles from Google News and its servers (which it has apparently already done).

Google was also quick to comment that the case did not create a precedent and that other judges in Belgium or elsewhere could well decide in its favour. So has it all been little more than an iconoclastic, Manneken Pis-style gesture à la Bruxelloise?

Not necessarily. It would be relatively easy for Google to satisfy Copiepresse with a modest royalty fee. But that would mean giving up on the principle – and Google's business model would never be the same again.

And what if this case plants ideas among other newspaper publishers and content providers? If the copyright genie is really out of the bottle, there is a risk of more and more news sources around the world gradually being carved out of Google, whose phenomenal success relies on speed, which in turn relies on 'caching'.

Other Belgian collecting societies have joined in the fun and the noise has not been missed by their counterparts elsewhere in Europe. EU laws are, after all, supposed to be relatively harmonised on these issues, as their domestic rules are based on the same copyright directive of 2001. In practice, details and interpretations are likely to vary from country to country and court to court.

If internet users are not allowed access to cached copyright-protected content, then Google will be left with a difficult choice between downgrading its service and negotiating a royalty arrangement with every collecting society that steps forward, each with its own set of claims under different national laws.

In its short history Google has rarely shown an inclination to negotiate with litigants smelling blood and closing in for a bite, however modest. So the Belgian case was a shock to its collective system. It could also be Microsoft's and Yahoo's: Copiepresse is in hot pursuit of both of them too.

But not every internet giant is in the same position. Having built its huge fortune on copyright-protected software, Microsoft is less hostile to the prospect of stricter copyright enforcement in the internet field. Indeed the idea that copyright can slow down Google's seemingly unstoppable expansion should be music to Microsoft's ears; a senior executive of Microsoft recently opened a new copyright front criticizing Google's major book-scanning project as a "systematic violation of copyright".

Even if cracks in the house that Google built please its competitors, a cacophony of different court cases and outcomes in the internet industry would be in nobody's interest. The trouble is that, so far, there is not a tune that everybody knows and can whistle.

- George Metaxas is a partner in the Brussels office of Hogan & Hartson.