

Kluwer Copyright Blog

Google Suggest: no copyright liability for suggesting words like Torrent, Megaupload and Rapidshare

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On 3 May 2011, the [Paris Court of Appeal](#) dismissed the claims of copyright infringement brought by the *Syndicat National de l'Édition Phonographique* (SNEP- trade association of the French recording industry) against Google. Since 2008, the search engine is proposing a service, Google Suggest, which guesses and suggests a list of keywords in real time while a user is typing the first letters of a word. The SNEP claimed that Google Suggest was leading Internet users searching for online music files to possibly illegal P2P websites with the suggestion of keywords such as “Torrent”, “Megaupload” and “Rapidshare”. In September 2010, the Paris First Instance Court rejected the claims in a summary judgment. The SNEP appealed the decision.

Interestingly, the SNEP did not invoke the liability of Google in application of Article 6 of the Law on Confidence in the Digital Economy (implementing the e-Commerce Directive) but relied rather on Article L. 336-2 of the *Code de la propriété intellectuelle* (CPI) introduced by the HADOPI law. In application of this provision, at the request of copyright holders, the Tribunal de Grande Instance (First Instance Court), can order all the necessary measures to stop or prevent copyright infringement. The request is addressed to any person likely to contribute to solve the problem. Quite criticized, the provision could be used in the future to ask ISPs to block access to illegal file-sharing and [streaming websites](#).

The Court was not convinced by the arguments raised by the SNEP. Google Suggest is an automatic service based on algorithms and the suggestion of websites (Torrent, Megaupload and Rapidshare) appearing in the search frame could not constitute a copyright infringement. As noted by the Court, not all the files hosted by the websites are illegal and the websites themselves are not illegal. The Court described the nature of the three websites: Torrent is a P2P network protocol permitting the transfer of data, Megaupload is a website enabling users to put any type of files online and Rapidshare is a file-hosting website. The Court made it clear that only the use of the files made by the users themselves could be considered as illegal.

The SNEP also tried to demonstrate, without success, that Google had acknowledged its liability by filtering keywords from Google Suggest. According to the Court, the filtering and deletion of the words could not prevent illegal downloading, resulting from the voluntary action of Internet users. Illegal content remained available despite the filtering.

If the decision rendered by the Court of Appeal is satisfactory and new Article L. 336-2 of the CPI logically inapplicable in that case, the proactive filtering by Google can raise some issues. By

removing words from its services, Google does indeed not expose itself to liability but restricts legitimate information and links that might be available on the companies associated to the keywords. There is always a risk that filtering, whether voluntary or imposed by a Court, lead to censorship.

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