Google Wins Appeal on Copyright of Nude Images

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A federal appeals court ruled yesterday that Google did not infringe on the copyrights of an adult publishing company by displaying thumbnail images of its nude photographs, handing Internet search companies a victory by allowing the display of such miniature pictures in search results.

Perfect 10, a publisher of sexually explicit magazines and Web sites, sued Google in 2004 for allegedly violating its copyrights, and the case quickly attracted wide attention not just for its adult subject matter but also for its possible impact on Internet copyright law. The issue of copyrighted material on the Web has assumed greater priority as videos, music and other proprietary material has flooded onto the Internet.

Three months ago, Google lost a copyright lawsuit brought by Belgian newspapers to remove their headlines and links from the Google News service. Google also decided to eliminate any mention of the newspapers from its search results but restored them this month with the publications' consent.

In the closely watched Perfect 10 case, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit in San Francisco reversed the decision of a lower-court judge, who had blocked Google from showing the small images. The appeals court ruled that the thumbnails fell within a "fair use" exception in copyright law because they play a role in the search process and thus have a function different from that of the original photos.

"We conclude that the significantly transformative nature of
Google's search engine, particularly in light of its public benefit, outweighs Google's superseding and commercial uses of the thumbnails in this case," Judge Sandra S. Ikuta wrote for the panel.

Perfect 10's case won support from the motion picture and recording industries, which have often complained that their copyrights are violated by Internet companies. Some groups advocating greater openness on the Web have lined up behind Google.

"We think this is a tremendous decision for the principle of fair use," said Art Brodsky, a spokesman for the Public Knowledge advocacy group. "It gives search engines and other useful services the ability to take advantage of computer technology in the search for and use of information."

Yesterday's ruling was not a complete victory for Google, because the judges directed the lower court to reconsider a separate finding in the company's favor. The judge had decided that Google was not liable for allowing Internet users to link from its search results to other Web sites that display photographs without copyright permission.

The appeals court opinion said, "There is no dispute that Google substantially assists Web sites to distribute their infringing copies to a worldwide market and assists a worldwide audience of users to access infringing material." The appeals court instructed the district judge to evaluate whether Google knew that unauthorized copies of Perfect 10's photos were being made available and failed to take steps to prevent it.

The judge was also told to make a similar assessment about Amazon.com, which was also sued by Perfect 10, alleging that its search engine links to thousands of copyrighted images.

Google had no immediate comment on the ruling.