

# ALERT

## IMAGES STORED IN A COMPUTER ARE “COPIES” UNDER THE COPYRIGHT LAWS

*Perfect 10 Inc. v. Amazon.com Inc.*, 2007 U.S. at LEXIS 27843 (9th Cir. December 5, 2007)



The operator of a website which markets and sells copyrighted images of nude models brought a copyright infringement action against Google and Amazon.com. The website owner, Perfect 10, brought a motion for preliminary injunction arguing that Google's use of thumbnail images and its practice of inline linking to full sized images violated its copyright. The District Court issued orders granting in part and denying in part the preliminary injunction against Google. The Ninth Circuit reversed.

In a case of first impression, the Ninth Circuit held that a photographic image is a work that is “fixed” in a tangible medium of expression for purposes of the Copyright Act when it is embodied (i.e., stored) in a computer server, hard disk or other storage device. The image stored in the computer is the “copy” of the work for purposes of copyright

law. Nevertheless, the practice of inline linking (the display of images stored in the computer of a third party) does not constitute “copying” for purpose of the Act because Google's computers do not actually store the photographic images themselves. Similarly, Perfect 10's distribution right was not violated because Google did not have a collection of stored full size images on its servers. With respect to the thumbnail images on Google's servers, the Court held that the fair use defense applied because Google was using the images in a fundamentally different way than the use intended by Perfect 10. In so doing, Google has provided a significant benefit to the public. Accordingly, the Ninth Circuit concluded Google was likely to succeed in proving its fair use defense.

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